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Message from the President of the United States, transmitting communications of the Secretary of War and the Secretary of the Interior, relative to certain lands in the Indian Territory acquired by treaty from the Creek and Seminole Indians.

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MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

Communications of the Secretary of War and the Secretary of the Interior, relative to certain lands in the Indian Territory acquired by treaty from the Creek and Seminole Indians.

JANUARY 28, 1885.—Read and referred to the Committee on Indian Affairs and ordered to be printed.

To the Senate of the United States:

In response to the resolution of the Senate of the 22d instant, setting forth that—

Whereas the United States, in 1866, acquired from the Creek and Seminole Indians by treaty certain lands situate in the Indian Territory, a portion of which have remained unoccupied until the present time; and

Whereas a widely extended belief exists that such unoccupied lands are public lands of the United States, and as such subject to homestead and pre-emption settlement, and pursuant to such belief a large number of citizens of the United States have gone upon them claiming the right to settle and acquire title thereto under the general land laws of the United States; and

Whereas it is understood that the President of the United States does not regard said lands as open to settlement, and believes it to be his duty to remove all persons who go upon the same claiming the right to settle thereon, and for that purpose has directed the expulsion of the persons now on said lands by the use of military force, and there seems to be a probability of a conflict growing out of the attempt to expel said persons so claiming right and attempting to settle: Therefore,

Resolved, That the President be requested to advise the Senate as to the status of the lands in question as viewed by the Executive, the action taken, if any, to expel persons seeking to settle thereon, and the reasons for the same, together with any other information in his possession bearing upon the existing controversy—

I have the honor to state that the matter was referred to the Secretaries of War and the Interior, and to transmit herewith their respective reports thereon, dated the 26th instant.

The report of the Commissioner of Indian Affairs, accompanying that of the Secretary of the Interior, recites fully the provisions of the treaties made with the Indian tribes ceding the lands in question to the United States, showing the condition and purposes expressed in said treaties regarding said lands, as well as the action taken with reference thereto, from which it will be seen that they are not open to settlement under any laws of the United States.

The report of the Secretary of War shows the action of the military authorities at the request of the Interior Department under section 2147 of the Revised Statutes.

The status of these lands was considered by my predecessor, President Hayes, who, on the 26th day of April, 1879, issued a proclamation warning all persons intending to go upon said lands without proper permission of the Interior Department that they would be speedily and immediately removed therefrom according to the laws made and provided, and that if necessary the aid and assistance of the military forces of the United States would be invoked to carry into proper execution the laws of the United States referring thereto. A similar proclamation was issued by President Hayes on the 12th day of February, 1880. On the 1st day of July, 1884, I considered it to be my duty to issue a proclamation of like import.

These several proclamations were at the request of the Secretary of the Interior.

As will be seen by the report of the Secretary of War, the military forces of the United States have been repeatedly employed to remove intruders from the lands in question, and that, notwithstanding such removals and in disregard of law and the Executive proclamations, a large body of intruders is now within the territory in question, and that an adequate force of troops has been ordered to remove the intruders and is now being concentrated for that purpose.

None of the land or general laws of the United States have been extended over these lands, except as to the punishment for crimes and other provisions contained in the intercourse act, which relate to trade and the introduction of spirituous liquors and arms among Indians, and do not sanction settlement. It is clear that no authorized settlement can be made by any person in the Territory in question.

Until the existing status of these lands shall have been changed by agreement with the Indians interested, or in some other manner, as may be determined by Congress, the treaties heretofore made with the Indians should be maintained, and the power of the Government to the extent necessary should be exercised to keep off intruders and all unauthorized persons.

CHESTER A. ARTHUR.

EXECUTIVE MANSION, *January* 27, 1885.

WAR DEPARTMENT,
Washington City, January 26, 1885.

SIR: I have the honor to return to you the resolution of the Senate, adopted January 22, 1885, in relation to the lands situated in the Indian Territory acquired from the Creek and Seminole Indians by treaty, a portion of which have remained unoccupied until the present time, in which the President is requested to advise the Senate as to the status of the lands in question, as viewed by the Executive, the action taken, if any, to expel persons seeking to settle thereon, and the reason for the same, together with any other information in his possession bearing upon the existing controversy.

The lands in question are understood to include the unassigned portion of the lands ceded to the United States by the treaties of 1866, with the Creek and Seminole Nations of Indians, respectively, such unassigned portion extending from the Canadian River on the south to the Cimarron River on the north, and from the country of the Cheyennes and Arapahoes on the west to the country occupied by the Kiowas, Kickapoos, and Pottawatomies on the east; and in reference to the in-

quiry of the Senate as to the action taken to expel persons seeking to settle thereon, I have the honor to report that, beginning in the year 1879, the military forces have been repeatedly employed to remove intruders from the lands in question, and that at the present time active military operations are in progress to remove a large band of intruders who have expressed their intention to resist such removal by force.

I inclose as a part of this report a statement prepared by the Adjutant-General, giving an abstract of the orders and instructions issued from this Department from time to time since the beginning of the organized intrusions of the lands in question and of the action taken in each case, which, it is trusted, will be found sufficiently full to give the information desired.

I inclose, also, copies of the proclamations of the President in relation to these intrusions.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
Secretary of War.

To the PRESIDENT.

Brief of papers showing action taken by the War Department in connection with invasion of the Indian Territory by D. I. Payne and others since April, 1879.

April 26, 1879, the President issued a proclamation warning all evil-disposed persons who had prepared for an organized settlement upon lands known as "Indian Territory" west of the State of Arkansas that they would be speedily removed thence by the agent, according to law, and that, if necessary, the military forces of the United States would be called upon to carry the laws into proper execution.

May 1, 1879, the General of the Army directed the commanding general Division of the Missouri to instruct the commanding general Department of the Missouri to use all his available troops to execute the terms of the President's proclamation, using force only on requisition of, and, when practicable, under personal supervision of, officers of the Indian Bureau, or of the several agents for the Indian tribes, pursuant to sections 2147–2149 and 2150, Revised Statutes.

May 2, 1879, the General of the Army, in compliance with instructions from the Secretary of War of same date, informed the commanding general Division of the Missouri that the movement to settle the Indian Territory must be resisted by all the power of the Government, civil and military, and advised him to order to certain points, indicated by the Secretary of War, small detachments of troops to encamp near the southern border of Kansas to notify all emigrants who should pass into the Indian Territory that they would be acting in violation of law and would be ejected by force if they persisted. Mounted officers should also be posted at Coffeyville to caution emigrants that any attempt to enter and settle in the Territory would result in violent expulsion, &c. All orders were to be executed firmly, but with due consideration to the misguided emigrants, &c.

May 7, 1879, the General of the Army informed the commanding general Division of the Missouri that emigrants were going into the Indian country from Baxter Springs, and directed him to promptly put a stop to any such unlawful intrusion, and to forcibly eject every emigrant who had gone over the border.

Under these instructions the emigrants were met by the troops and turned back without difficulty.

It having become known that preparations were being made in the early part of 1880 by certain parties to invade the Indian Territory, the President again issued a proclamation, under date of February, 1880, warning all persons against doing so, and notifying them that no efforts would be spared by the Government to prevent such invasion, and that if necessary the aid of the military forces of the Government would be invoked to carry out the laws.

February 25, 1880, General Pope, commanding the Department of the Missouri, requested instructions as to action to be taken by the military under the President's proclamation, and as to what was to be done with intruders arrested, &c.

In reply to the foregoing, General Pope was furnished for his guidance a copy of the Secretary of War's letter to the General of the Army of March 10, 1880, with its inclosures, viz, letters from the Secretary of the Interior and Commissioner of Indian Affairs, giving specific replies to the questions asked by him, and which the Secretary

of War directed to be carried out. The replies of the Commissioner of Indian Affairs were to the effect that the military authorities should be untrammeled and free to act as the necessities of the case seem to require. That the Indian Bureau has the exclusive authority to grant permission to white men to go into the Indian Territory. That where intruders are arrested they should at once be removed from the Territory, as provided by section 2147 Revised Statutes, and that if they return they are subject to a penaly of $1,000 under section 2148, and should be turned over to the United States marshal at Fort Smith, to be proceeded against according to law.

All property of such intruders, if of such a character as to warrant or allow, to be seized and turned over to the United States marshal, otherwise it should be destroyed.

May 19, 1880, General Pope reported the capture of Capt. D. L. Payne and band of thirteen intruders into the Indian Territory, and asked what should be done with them.

June 3 he was informed of the decision of the Secretary of War that, under the law, the intruders should be taken outside of the Indian Territory and there discharged, with warning not to return.

July 16, 1880, General Pope reported capture of D. L. Payne and party of 22 men, and asked if he should turn this gang over to the United States marshal at Fort Smith for trial, &c.

Thereupon, July 31, General Pope was furnished a copy of Interior Department letter of July 28, requesting that those of the parties arrested who had been previously removed from the Indian Territory be turned over to the civil authorities under section 2148 Revised Statutes. Under these instructions the Lieutenant-General reported August 7 that Payne and party left Caldwell, Kans., on that day for Fort Smith, and that those men captured with Payne who did not belong to his first party of invasion had been released.

December 8, 1880, General Pope reported that a purpose existed to invade the Indian Territory, and that many had already been arrested, and requested definite instructions, in case of resistance by the parties, to what extent violent measures might be used; if shooting is the order of the Department.

December 11 General Sheridan reported that Payne and his two hundred followers had moved west of Caldwell and made no attempt to cross into the Indian Territory, and that the invasion of that Territory might be considered at an end.*

May 18, 1882, a copy of Interior Department letter of May 16, stating that Agent Miles reports Payne with a large party on the march to Oklahoma, was sent to General Sheridan to order the arrest of any trespassers and to report action.

May 23, 1882, General Pope reported capture of Payne and twenty-nine followers, trying to get into Oklahoma.

In referring this to the Secretary of War, the General of the Army recommended that Payne be held a prisoner in the guard-house at Fort Sill, and made to work like other prisoners.

On May 27, General Sheridan reported that Payne and party were about to reach the Kansas line, and that he had instructed General Pope to hold Payne a prisoner, subject to instructions from Washington, and set all others free, but General Pope had released Payne before receipt of the telegram instructing otherwise.

General Pope, in letter of July 15, 1882, stated that Payne and his followers would no doubt again attempt to occupy the Oklahoma District, and being arrested and released without consequences to himself, would continue to repeat this, and that these transactions appeared in the nature of a farce, the Government being powerless to punish the offenders, &c. Also that Payne had brought suit against him for $25,000 damages for his action as Department commander. In forwarding this communication General Sheridan said he hoped some so efficient remedy might be adopted to terminate the matter.

The General of the Army, in submitting this communication to the Secretary of War, advised that the President order Payne and his followers to be excluded by military force, and thus end the farce.

August 28, General Sheridan reports capture of Payne, with six followers; and that they were disarmed and en route to Fort Reno as prisoners.

The General of the Army again recommended their imprisonment in the guard-house, to be held until some lawful way of punishing them could be discovered, but the Secretary of War returned the communication indorsed, that the annoyance was fully understood, but it would not be prudent to punish them by imprisonment when the law had failed to provide such punishment.

At the request of the Interior Department, General Pope was instructed to send the prisoners to the United States marshal at Fort Smith without delay.

September 30, 1882, the commanding officer at Fort Reno reported that the prisoners had been turned over to the United States marshal as directed, who discharged them

*As to action by the military during 1881, see extract of the annual report of the commanding general, Department of the Missouri, for that year, appended hereto.

and summoned them to appear at the next term of court. Also states that Payne's followers boasted that as soon as released they would again invade the Territory.

In submitting this to the Secretary of War, the General of the Army said it was now for the President to determine whether the treaties are to be defied by a bold adventurer like Payne, and asked instructions for the protection of the military authorities who have been compelled to incur serious liabilities in the enactment of the varied farce.

During the year of 1883, Payne and his parties were persistent in their efforts to enter and occupy the Oklahoma District, but were readily and promptly ejected by the troops.

May 15, 1884, a preliminary report of information obtained at post of Fort Reno concerning the intrusion of "boomers" into Indian Territory was forwarded from the Department of the Missouri with suggestions as to best means of suppressing the same, &c.

Early in June, 1884, the Secretary of War was advised by the Secretary of the Interior of the existence of wire fences in that part of the Indian Territory called Oklahoma, and in consequence thereof the Secretary directed that orders be given to the commanding general of the Department of the Missouri to take immediate steps to remove all such wire fences. This order was promptly communicated through military channels to Colonel Hatch, commanding the military district of Oklahoma, and under date of August 22, 1884, Colonel Hatch reported that the thirty days' notice served upon parties who had erected fences in Oklahoma to remove them having expired, and some not having obeyed the order, those fences not already removed would be removed at once; and in the absence of any further report it is supposed that all fences have been removed.

In his official report Colonel Hatch made the following statement:

"Payne and the men with him who are engaged in locating claims will continue to agitate the opening of this Territory in the same manner as before; not that they really desire to have the country settled, but that they may obtain money from the ignorant people deluded into the purchase of claims and town lots, and from the fees paid on joining what they term the 'Oklahoma Colony.' The payments for surveys, claims, town lots, and initiation fees must in the aggregate have already amounted to the neighborhood of $100,000, all of which has been divided among the leaders. Should the country be open to settlers there would be an end to their profits; hence, in my opinion, Payne and his immediate associates do not want it declared open."

June 11, 1884, the commanding general, Department of the Missouri, was, by direction of the Secretary of War, instructed to take immediate steps, in accordance with section 2147, Revised Statutes, to remove any intruders from the district of Oklahoma, and to require them to leave the limits of the Indian Territory, &c.

In the mean time various reports were received showing that the number of intruders was steadily increasing, &c.

July 30, 1884, the War Department informed the President of the condition of affairs in the Indian Territory in connection with intruders. Whereupon the President, August 2, 1884, directed the Secretary of War to employ the military forces to remove the intruders.

August 4, 1884, the commanding general, Division of the Missouri, was directed to act accordingly.

July 31, 1884, the President's proclamation of July 1, 1884, was published to the Army in General Orders, warning all persons against any attempts to remove to or settle upon lands known as the Oklahoma lands in the Indian Territory, and notifying all such persons who so offend that they will be speedily and forcibly removed therefrom.

August 5, 1884, the assistant adjutant-general, Division of the Missouri, reports that necessary instructions for removal of intruders have been given.

Same date, the Interior Department requested that telegraphic instructions be given to Colonel Hatch, commanding District of Oklahoma, to move against Payne and the intruders into Indian Territory.

July 31, 1884, the commanding general, Department of the Missouri, inclosed copies of reports relative to removal of intruders, and stated that "troops are now ready to enforce orders," and requested instructions as to where prisoners should be sent, and whether cattle-men should be permitted to remain in the Indian country.

August 5, 1884, Lieut. W. L. Finley, Ninth Cavalry, acting assistant adjutant-general, District of Oklahoma, forwards copy of instructions to Capt. F. T. Bennett, Ninth Cavalry, relative to removal of intruders from the Indian Territory.

August 21, 1884, the commanding general Division of the Missouri forwards report of commanding general Department of the Missouri indorsing papers in connection with removal of intruders from the Indian Territory, who states that it is probable that the District of Oklahoma can be discontinued in September, except perhaps a troop of cavalry.

August 26, 1884, a report of Capt. P. Cusack, Ninth Cavalry, was forwarded from

Division of the Missouri reporting assistance rendered by his command to representative of the Indian agent in arresting intruders found in Cherokee country.

Under date of August 27, 1884, the Missouri Division forwards a copy of report of Capt. Francis Moore, Ninth Cavalry, of his action in assisting the representative of the Indian agent to remove intruders from Rock Falls, known as the headquarters of Payne's Oklahoma colony.

August 27, 1884, commanding general Division of the Missouri forwards letter from commanding officer District of Oklahoma, reporting that the 15th of September would probably complete the removal of all intruders. General Schofield at the same time requested instructions as to treatment of unauthorized persons who may enter the Indian Territory.

August 27, 1884, the Interior Department, in acknowledging receipt of War Department letter conveying above information, states that in surrendering the parties for trial the military can only be governed by act of January 6, 1883, and jurisdiction of court will depend in what part of Territory the arrest was made.

August 29, 1884, the Department of Justice, in reply to War Department letter of same date, relative to intruders arrested upon Indian Territory suing out writs of habeas corpus at Fort Smith, states that if State authority issue a writ for one in custody it is the duty of the custodian to make due return, but in any event to continue to execute the authority under which he holds the prisoner, even to the extent of not taking or suffering him to be taken before the State authority, &c.

August 30, 1884, the Department of Justice, in reply to War Department letter respecting habeas corpus writs for trespassers upon Indian lands, states that either the United States courts in Kansas or Arkansas are competent to give the law as to their jurisdiction until question shall have been carried to Supreme Court.

September 3, 1884, the commanding general Division of the Missouri forwards copy of letter from commanding general District of Oklahoma, who reports troops under Captain Carroll, Ninth Cavalry, engaged in removing fences inclosing pastures in Oklahoma proper, where orders to remove were not complied with, &c.

Under date of September 17, 1884, the commanding general Division of the Missouri forwards report of Colonel Hatch, that nearly all intruders have been removed from the Cherokee strip, and that by September 15 he expects to have Oklahoma clear of all intruders and fences. Colonel Hatch also suggests places for camps in his district, required to prevent intrusion of unauthorized persons during the winter, &c.

On the 26th of September 1884, a letter was written to the commanding general Division of the Missouri approving establishment of camps, &c.

September 29, a letter was addressed to the Secretary of the Interior by the War Department for suggestions as to treatment of intruders and aid of Interior Department in preventing organized movements into the Indian Territory.

September 18, 1884, the commanding general Division of the Missouri telegraphs that Payne and other prisoners were turned over to United States marshal at Fort Smith, Ark., September 8.

September 17, 1884, General Auger telegraphed that Payne, with followers, would probably enter the Indian Territory again on the following day, and, in case of their arrest on the Cherokee strip, requesting instructions as to whom they should be turned over to. Whereupon, by direction of the Secretary of War, a map showing jurisdiction of the United States district courts was forwarded to commanding general Division of the Missouri, with instructions to turn over the intruders when arrested to the United States court of the district of which the locality where the offense was committed is a part.

Under date of September 11, 1884, the governor of Kansas indorses to the President copy of petition received by him from Capt. D. L. Payne and seven others in custody of military authorities for attempting to settle upon Indian lands, and asks that these parties be turned over to the civil authorities at Wichita, Kans., for trial.

The Secretary of War, in letter of September 20, replied: "I am officially informed that Payne and the other persons were on the 8th September (three days before the date of your letter) turned over by the military authorities to the United States marshal at Fort Smith, Ark., and have not since been in military custody"; also that he was advised of another contemplated intrusion by Payne and his followers on the 13th, and that instructions had been requested as to the proper place of their delivery upon being again arrested, and that the Department will endeavor to prepare such instructions to the military authorities as will insure the turning over of the offenders to the proper court for punishment.

On the 9th October, 1884, the commanding general Division af the Missouri forwards a report of Colonel Hatch to the effect that the Payne party propose to re-enter Oklahoma about October 9th, and that he thought it best to retain Troop K, Ninth Cavalry, until he could send a troop to relieve it at Camp Russell, I. T.

Instructions were given by the commanding general Department of the Missouri to pick up party going to select town site, &c.

October 12, 1884, Colonel Hatch requested that an agent of the Indian Department be stationed near the camp of the troops at Caldwell, Kans., for the purpose of removal of intruders; and if this could not be done that some one be appointed to act in that capacity.

The commanding general Division of the Missouri forwards copy of a letter from Colonel Hatch reporting that on the 20th instant he came up with Lieut. H. H. Wright, Ninth Cavalry, who had under guard a party of intruders, 24 wagons in all, who are being escorted out of the Territory.

November 13 commanding general Division of the Missouri forwards letter from Colonel Hatch reporting discontinuance of district of Oklahoma, and disposition of stores and supplies, and that he is about to proceed to Fort Riley, Kans.

November 14, the Interior Department, in acknowledging receipt of letter relative to employment of an Indian agent to co-operate with troops in the Cherokee strip, says there are no funds available for such purposes.

December 27 the commanding general Division of the Missouri telegraphs that a large body of armed men have again intruded into the Indian Territory and refused to surrender to the detachment sent to intercept them, and that he has given instructions to the commanding general Department of the Missouri to send a sufficient force to expel them. Asks at the same time if any other action is desired by the War Department.

On the same day a telegram was sent to General Schofield acknowledging the receipt of his dispatch and informing him that the Secretary of War approves of his action.

December 30, 1884, a dispatch was received from commanding general Division of the Missouri, stating that General Augur desires the Indian Department to send an agent to designate intruders, and to take charge of property seized. Also asks whether leaders (hunters) shall be arrested and turned over to civil authorities; his present orders being limited to expelling intruders.

December 31, a copy of the report of Maj. Thomas Dewees, Ninth Cavalry, commanding Fort Reno, Ind. T., was received, giving number of arrests made and parties escorted out of the District of Oklahoma, by Troop I, Ninth Cavalry, October 18 and 20, and December 1, 2, 3, 4, and 7.

January 5, 1885, the commanding general Division of the Missouri, forwards a report of Colonel Hatch of affairs in Indian Territory in connection with movement of troops ordered there to eject the intruders, which places the number of intruders now there at four hundred, with very few women and children, who are mostly living in small excavations in sand hills on left bank of Cimarron River, near Cedar Creek. These people, Colonel Hatch says, are there generally upon advice of leaders or lawyers, who inform them that they have a lawful right to resist by arms any attempt on the part of the Government to remove them, &c.

January 7, a copy of the report of Lieut. M. W. Day, Ninth Cavalry, was received from headquarters Division of the Missouri, from which it appears that when he arrived at Stillwater with his detachment of troops (where a large party of the intruders are encamped), and attempted to arrest Mr. Couch, their leader, he was confronted by about 200 men armed with double-barreled shotguns and Winchester rifles. They refused to submit to an arrest without a resort to arms, though Lieutenant Day had about 30 men on a skirmish line. As the intruders were densely massed, Lieutenant Day hesitated to give the command to fire, as the slaughter would no doubt have been great.

Lieutenant Day further states that he has done all he can to make the arrest without resorting to arms, and requests to be informed *if he is to treat this body of men as insurgents, and after calling upon them to give up their arms and submit to arrest* to open fire upon them. If he is compelled to arrest them without firing on them, he will require re-enforcements.

January 13 the Lieutenant-General telegraphed to General Augur requesting him immediately to send all official information in his possession regarding the attitude of the invaders towards the troops in the Indian Territory, the exact number of troops sent to carry out the provisions of the President's proclamation, and other orders directing the removal of the intruders. Also requested General Augur to communicate with Colonel Hatch by telegraph requiring full particulars, and to send him, if necessary, additional troops to accomplish the purpose in view.

January 14, 1885, General Augur informed Lieutenant-General Sheridan by telegraph that Colonel Hatch has orders to remove the intruders from Indian Territory, without violence, if possible. He will have seven companies of cavalry in hand and one company of infantry to occupy Camp Russell, 9 miles from the camp of the intruders. General Augur believes this force sufficient for present emergency. The intruders number about 250 men and a few women. Couch, their leader, is reported to be a fanatic who believes himself in the right and is willing to risk a collision, as likely to invite public sympathy and compel favorable Congressional action. Colonel Hatch thinks Couch will resist arrest and there will be a collision.

January 15, 1885, General Augur telegraphs that Colonel Hatch is beyond reach of telegraph; that intruders claim to be advised by lawyers and some members of Congress to resist removal; that Colonel Hatch will have about 350 cavalry, and that the troops from Fort Reno were delayed by a severe snow-storm.

On the 16th of January General Augur, in reply to a telegram of the same date on the subject, reports that Camp Russell is situated on the Cimaron, nearly opposite the mouth of Ephraim Creek, and the principal camp of the intruders is reported to be about 15 miles northeast of Camp Russell, on the Stillwater.

January 10, General Augur forwards copy of a letter from Col. Edward Hatch, Ninth Cavalry, who invites attention to the necessity of urging Congressional action in regard to lands in Oklahoma, which he says should either be declared open for settlement or laws should been acted enjoining penalties for invasion of the Territory; else the Government will be compelled to keep a large force at great expense in Oklahoma, to guard every thoroughfare, river, and water-course during the coming year, as, granting that the force now moving to expel the armed intruders is ample to enforce the orders for their removal, it will be entirely insufficient to arrest the movement sure to take place in the spring from the hordes coming from Kansas, Missouri, and Arkansas; an estimate from reliable sources placing the number who will attempt the settlement of Indian lands in the Territory at not less than twenty thousand people, &c.

This report is also accompanied by a detailed report from Lieutenant Day, Ninth Cavalry, showing his attempts to induce a peaceable surrender of the intruders located at Stillwater, Ind. T.

January 19, General Augur reports by telegraph the whereabouts of Colonel Hatch and the troops in the Indian Territory; that the number of boomers has increased to 375 and is constantly increasing, and that there is no doubt they will fight. Should this be the case and they fire upon the troops, desires to know whether they are to be treated as public enemies and to be captured or killed, so that there can be no chance of a misunderstanding as to the orders on this point.

January 20, the Lieutenant-General, in accordance with instructions of the Secretary of War, informed General Augur, by telegraph, that the President's orders for the removal from the Indian Territory of the intruders therein were to be enforced. That it was hoped that this might be done without an armed conflict, but that the responsibility for any bloodshed must rest upon those who do not accept the warning of the proclamation of the President of July 1, 1884, and attempt with arms to resist the troops ordered to compel their removal. Also, that the military force should be increased, so that all intruders might see the hopelessness of resistance. Following the communication of these instructions, the Lieutenant-General directed General Augur to immediately re-enforce Colonel Hatch by the remaining companies of the Ninth Cavalry, and also to send him re-enforcements from the Tenth, Twentieth, and Twenty-second Regiments of Infantry until the force he has now in hand shall be increased by 300 additional men.

January 21, General Augur acknowledges receipt of above instructions (of which he has furnished Colonel Hatch a copy), and reports that the additional troops will be sent to Caldwell as soon as transportation and supplies are ready for them, but that on account of the severe weather and snow it will be difficult to get troops from Elliott, and supplies. Desires to know if he can send troops from Fort Leavenworth, providing it will not interfere with the school.

By telegram of January 21 from this office, General Augur was authorized to send troops from Fort Leavenworth, providing it did not interfere with the school.

July 23, the commanding general, Division of the Missouri, repeats dispatch from the commanding general, Department of the Missouri, communicating information received from Colonel Hatch that Couch, the leader of the boomers, has notified him that they will fight; that their strength is 400, and that the United States troops are moving into position to cut off supplies and stop new arrivals.

Extracts from the annual reports of the commanding general, Department of the Missouri, relative to affairs in the Indian Territory, in connection with the Oklahoma invasion, for the years 1879, 1880, 1881, 1882, 1883, 1884.

1879.

INVASION OF INDIAN TERRITORY.

During last spring there was some excitement (much more in the East than here) about a proposed invasion of the Indian Territory for occupation and settlement. Misled by absurd notices and proclamations put forth by a man named Carpenter, a

good many honest and worthy people did begin to move south for the purpose of entering upon the lands in the Territory under the belief that they had a legal right to do so; but in every case, when properly notified that they would violate the law by such a movement, those of them who had entered the Territory returned, and those who had not reached the line turned back. There is no doubt that the whole excitement was created for certain local interests not worth while to set forth, and was stimulated by parties interested for purely speculative purposes. The whole affair faded out as soon as the purposes of the Government were known, and it was made manifest that the proceeding would be arrested by force if necessary. Some infantry force is still kept at points along the northern line of the Territory, but as there is no likelihood that further movements into the Territory will be made this winter, it is probable that this small force can be withdrawn for the winter very soon. It is, however, not improper to say that as the whole of the eastern portion of the Indian Territory constitutes one of the finest agricultural and pastoral districts of the country, is a most attractive region to the white emigrant, and is only sparsely occupied by tribes of Indians who make little use of its productive capacity, the Government must expect and in my opinion should be prepared to meet greater difficulty every year in preserving it to the occupation of the Indian tribes. This section will support, when properly cultivated, some millions of civilized people, and greatly add to the productive wealth of the country. That it is coveted by people desiring to emigrate from all parts of the West is beyond question, and it is equally certain that every means will be resorted to to acquire a foothold in it and its virtual possession by the whites. To illustrate its great area, and the very insignificant manner in which it is now occupied, I submit, inclosed, a tabular statement showing the area occupied by the Indians, who make little if any use of the soil, and a comparison in that respect with the populous States east of it. To hold it in secure and unmolested possession of the Indian tribes now there will require a larger force every year, and before long a continuous cordon of posts near together and entirely surrounding it. I merely set forth the situation as it is, that the Government may be prepared for increasing demands for the protection of the Indian Territory against emigration of the whites and a constantly increasing military force to that end.

1880.

THE INDIAN TERRITORY.

The condition of affairs in the Indian Territory remains practically as it was at the date of my last year's report.

The situation there is complicated by the fact that we have not only to secure safety against any Indian outbreaks or raids upon the settlements of Texas and Kansas, *but also to protect the Territory against the invasion of white emigrants and settlers, who seem determined to possess such part of it as they consider open to pre emption claims.*

In consequence of rumors, more or less reliable, concerning the intrusion of whites into the Indian Territory, with a view to locating and settling lands therein, which, it is claimed, are unsurveyed public lands subject to pre-emption under the laws, *the President of the United States issued his proclamation forbidding such intrusion on the 12th of February*, 1880, and the military forces in this department were ordered to execute it. Troops in sufficient numbers were accordingly stationed along the northern line of the Territory, with orders to turn back any parties of white men who might attempt to enter the Territory for purposes of settlement, and conduct them to the Kansas line. In case the same parties, or members of the same parties, entered the Territory with the same purpose a second time, they were to be arrested and held in custody by the military authorities until orders for their disposal were received from Washington. Subsequently the military authorities of this department were ordered to turn over persons thus arrested to the United States marshal at Fort Smith, Ark., for trial before the United States district court for the western district of Arkansas, in which is included the Indian Territory.

The troops at Fort Reno, Indian Territory, were also instructed to patrol constantly that district of the Indian Territory known as the Oklahoma District, which, as above stated, is claimed to be public land and subject to settlement as is any other unsurveyed public land in the United States.

Under this proclamation and order, Captain Payne, a citizen of Kansas, with a party of about twenty persons, was arrested in the Indian Territory, where he had gone, according to his own statement, to take up lands and settle. He and such of the other members of his party as had entered the Territory a second time were turned over to the United States marshal at Fort Smith, and were released on giving bail to appear for trial at the next session of the court. It is certain that Captain Payne and his followers fully believe in their right to make such settlement in the Oklahoma District, and they appear, and I doubt not are, anxious to test the question in

the United States courts. Whether or not they will re-enter the Territory pending the trial of their case before the United States court cannot now be said, but probably they will do so. Under the President's proclamation and the orders made in conformity thereto it will be necessary to rearrest them and repeat the same process. It is very desirable, therefore, that the question of their right to settle in the Indian Territory be passed upon as soon as practicable, and I trust that the United States court will settle the matter at its next session.

1881.

INDIAN TERRITORY.

At the date of my last report it was uncertain whether Payne, who had been indicted and was under bonds of the United States district court for invading unlawfully the Indian Territory with a band of so-called settlers, would, in his own critical position before the United States courts, again attempt to invade and locate in that Territory; but he began soon after to assemble a considerable following, numbering several hundred persons, along the southern line of Kansas, between Caldwell and Arkansas City, with the openly declared purpose, as announced by circulars over his own signature and notices in the newspapers, to force his way into the Indian Territory and occupy the district known as Oklahoma. Although there was no concealment of any kind on his part, or that of any one else, that his organization and its purposes were in absolute violation of the laws of the United States, and the proclamation of the President based thereon, yet he was permitted, for want of laws to cover the case, to organize a force of large dimensions and lead them down to the line of the Indian Territory, which he would undoubtedly have entered in violation of law and in the face of a certain outbreak of the Indians, which would have probably devastated the Kansas frontier and cost the lives of hundreds of innocent people, but for the presence and assured resistance of the cavalry forces of the United States which I had assembled along that line to prevent such an outrage. So persistent was Payne and his following that I was obliged to re-enforce considerably the first detachment of troops sent there, and to threaten any one who crossed the line into the Indian Territory that the animals, ridden or driven, should be killed the moment they crossed the line, and the men arrested and turned over to the United States courts. They marched to and fro along the line, keeping carefully within the State of Kansas, and finally encamped near Caldwell, where they remained during an extremely cold spell for three weeks, in the hope that the troops would finally return to their posts. Finding that there was no prospect that the troops would abandon their position, they finally, about the 6th of January, dispersed and scattered themselves among the settlements of Kansas, being compelled to it by extreme cold and suffering. Whatever may be Payne's object in all this, I think it certain that his followers firmly believed, through his representations and reasonably plausible legal authority, that they had the right to settle on these lands in the Indian Territory, and that their right to do so was obstructed unlawfully by the United States forces. It seems strange that such organizations can be openly made and everywhere announced to violate the laws of the United States at such fearful risk to exposed settlements, and that there should be neither law nor public sentiment to check it or to punish the criminals. Payne was afterwards tried for his invasion by the United States courts and sentenced under the law to pay a large fine, but as he is utterly impecunious, of course it never has been and never will be paid.

He is now engaged—although a sentenced criminal for the same act—in getting up another organization for precisely the same unlawful purpose, and no doubt will be so successful that troops must be again taken from their posts and legitimate duties to oppose his invasion by force. It would seem that in the light of these experiences some law should be passed to cover his case and that of others engaged in the same business. At present there are troops enough in that region to deal with all such attempts likely to be made, but it may well happen that pressing dangers or emergencies elsewhere may at some time leave us in such condition that the force in the Indian Territory will be entirely insufficient to protect it. Even now a great sensation has been occasioned by the reported discovery of silver in the Wichita Mountains, in the southern part of the Indian Territory, and it has already been necessary to use a considerable military force to prevent invasion in that quarter also. Whether there be really valuable discoveries of silver in those mountains or whether these sensational reports are merely parts of a concerted plan for invading the Indian Territory from both sides, is not yet known, but the resolute purpose of thousands of persons in this part of the country to occupy and possess the lands in the Indian Territory is unquestionable and must soon be met, if it be intended to prevent it, by much more stringent laws and heavier personal penalties than exist now.

It does not appear at all likely that we shall at present have any troubles with the Indians in the Territory except what arise from the chronic complaints about food, *unless the Indians are driven to hostilities by extensive invasions of their lands by white intruders, with whom we can probably deal satisfactorily, unless the military force be diminished by the necessities of other parts of the country.*

1882.

PAYNE INTRUSION.

The notorious "Captain Payne" again made an attempt with a small party to enter and occupy the Oklahoma District in the Indian Territory, but, as heretofore, he was arrested by the troops and taken to Fort Reno with several of his followers. Thence he was, at the request of the Interior Department, taken to Fort Smith, Ark., and turned over to the United States marshal for the western district of Arkansas for trial before the United States courts. He was, of course, released from custody and notified to appear at the next term of the court. He brought suit at once in the State courts of Arkansas against the officer who took him to Fort Smith, and laid his damages at an amount which his whole colony could not have made in fifty years. His history, in connection with this oft-repeated and publicly-proclaimed violation of the laws of the United States, is contained in the following letter to division headquarters by me in June last:

"We shall no doubt soon have a repetition of the attempts of Payne and his followers to enter and occupy the Oklahoma District in the Indian Territory, necessarily followed by his arrest by the troops after long marches, his transportation to the line of the Indian Territory, either north or south, and then his release, without any consequence whatever to him.

"In a short time he will appear again on the southern line of Kansas, and the same process will be gone through with.

"These proceedings have been going on for some years. The Government is punished for them by heavy expense. The troops are punished by long and severe marches at all seasons of the year. The soldiers employed in this business are taken from the posts in the vicinity of the Indians, where they are much needed, and have their horses worn and broken down so as to be in part unfitted some time after for the active service which may be imposed on them at any moment, and all this because a convicted criminal, once condemned and fined for this violation of law, persists repeating his crime. Being wholly impecunious, and the law imposing no other punishment in his case except a fine, which he is unable to pay, he is practically beyond the reach of law. He proclaims with all the publicity of newspapers and posters, his purpose to renew the offense for which he is now under conviction; assembles openly a considerable number of persons, at some point on the southern line of Kansas, and enters at once upon another violation of the law. This one man under sentence by the United States courts publicly enacts this performance about once a year, and the Government appears to have no remedy except to keep a company of cavalry simply to watch and to rearrest and remove him from the Territory. It would be easy to stop all this brazen outrage upon law and upon respect for the authority of the Government by simply confining Payne in the guard-house at the post in the Indian Territory nearest to which his arrest by the troops is made, and compelling him for a time to work for his living, a thing probably very unusual and painful to him; but I presume that process cannot be pursued under the law. Meantime Payne brings suit in the courts for $25,000 damages against me for my acts as department commander in having him ejected from the Indian Territory, proclaims his purpose publicly to repeat his invasion this autumn, and then repairs to Washington City, as is stated in the papers, to confer with the Interior and War Departments on the subject of his next attempt to invade and occupy the Indian Territory.

"These transactions would appear to be rather in the nature of a farce but for their effects. Few people in this region have any respect for laws or decisions of the courts in the matter of the Indian Territory when they see such performances going on constantly, and observe, as they cannot fail to do, that the Government appears to be powerless to punish any one for open and premeditated violation of the laws, and the proclamation of the President of the United States based thereon.

"Naturally, every loafer or outlaw in all this region, as indeed every ordinarily respectable citizen, can have but little belief in the power of the Government to protect the Indian Territory by punishing this class of offenders against the law. Indeed it is reasonably plain that the only persons likely to be punished are the agents of the Government, military or civil, who are engaged under its orders in trying to prevent this violation of the laws and obligations of the United States.

"In order to attempt at least to put a stop to the continued repetition of proceedings which bring the Government and the laws into contempt, I am compelled to ask

further instructions as to the personal treatment of Payne if he be again arrested in the Indian Territory in the act of another violation of law. The present modes of procedure—the only modes I am authorized to pursue—are manifestly ineffective, and have come to be considered a sort of a farce in this part of the country, and furnish the people a source of mirth rather than of warning to respect the laws of the United States and the orders and proclamations of the President."

I sincerely trust that some law will be enacted to cover Payne's case at as early a date as possible. The only proceedings we can take against him have been taken, and manifestly without avail.

1883.

INDIAN TERRITORY.

No doubt small difficulties and quarrels, and perhaps occasional violence, will arise between the Indians and stock-men who overrun that region, but nothing of a very serious character is likely to result.

Payne and his parties of so-called colonists are persistent in their efforts to enter and occupy the Oklahoma District, but so far they have been readily and promptly ejected by the troops. The whole history of Payne's operations is a farce, in which the Government is, of course, at a disadvantage. There is no punishment for Payne and his followers, the law only providing a fine for such transactions—a sort of punishment easily borne by the impecunious crowd which follows this business of intrusion into the Indian Territory. It should seem that some adequate punishment for these offenders should be provided. As matters stand, the whole affair is simply a series of processions to and from the Kansas line, for the general amusement of the people of this region. Of course, by keeping enough troops in the field we can drive all these parties out, but it is both an expensive and insufficient method of dealing with the question.

1884.

INDIAN TERRITORY.

Payne, notorious in previous years for his attempts to form settlements within that portion of the Indian Territory known as Oklahoma, succeeded again this year in collecting five or six hundred men, women, and children, and encamped them within the Indian Territory, a few miles south of Hunnewell, Kans. His men were armed and avowed their intention of going to Oklahoma. Failing to heed the proclamation of the President, warning them against an invasion of the Indian Territory, the President directed the use of the troops to remove them. On August 7 the commander of the District of Oklahoma arrested Payne and his party, and after returning the women and children, and most of the men, to Kansas, sent Payne with a number of old offenders to Fort Smith, Ark., where they were turned over to the marshal of the United States court at that point on September 8. It is understood that Payne was there released upon his own recognizance of a thousand dollars and turned loose; at all events he was back at Hunnewell organizing another expedition for the Indian Territory before the troops who took him to Fort Smith could return.

I am informed, reliably, "that he has something of a following near Hunnewell, and is daily making violent speeches in the neighboring towns, advising burning the country and bushwhacking all who may oppose him." A few days ago he paraded quite a party with banners inscribed, "On to Oklahoma!" "Oklahoma forever!" "We go this time to stay!"

Of course, if he again invades the Territory he will again be arrested and turned over to the civil authorities, again to be released, and again to return, and, organizing another party, repeat what would be but a ridiculous farce, were it not that it engenders a contemptuous disregard of law, imposes exceptional and unpleasant duties upon the troops, and upon the Government great expense.

The orders of the War Department for the destruction of unauthorized fences in Oklahoma have been carried out.

A proclamation by the President of the United States of America.

Whereas it has become known to me that certain evil-disposed persons have, within the territory and jurisdiction of the United States, begun and set on foot preparations for an organized and forcible possession of and settlement upon the lands of what is known as the Indian Territory, west of the State of Arkansas, which Territory is designated, recognized, and described by the treaties and laws of the United States and by the executive authorities as Indian country, and as such is only subject to occu-

pation by Indian tribes, officers of the Indian Department, military posts, and such persons as may be privileged to reside and trade therein under the intercourse laws of the United States; and

Whereas those laws provide for the removal of all persons residing and trading therein without express permission of the Indian Department and agents, and also of all persons whom such agents may deem to be improper persons to reside in the Indian country:

Now, therefore, for the purpose of properly protecting the interests of the Indian nations and tribes, as well as the United States, in said Indian Territory, and of duly enforcing the laws governing the same, I, Rutherford B. Hayes, President of the United States, do admonish and warn all such persons so intending or preparing to remove upon said lands or into said Territory without permission of the proper agent of the Indian Department, against any attempt to so remove or settle upon any of the lands of said Territory; and I do further warn and notify any and all such persons who may so offend that they will be speedily and immediately removed therefrom by the agent according to the laws made and provided; and if necessary the aid and assistance of the military forces of the United States will be invoked to carry into proper execution the laws of the United States herein referred to.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this twenty-sixth day of April, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

[SEAL.] RUTHERFORD B. HAYES.

By the President:
WM. M. EVARTS,
Secretary of State.

A proclamation by the President of the United States of America.

Whereas it has become known to me that certain evil-disposed persons have, within the territory and jurisdiction of the United States, begun and set on foot preparations for an organized and forcible possession of and settlement upon the lands of what is known as the Indian Territory, west of the State of Arkansas, which Territory is designated, recognized, and described by the treaties and laws of the United States, and by the executive authorities, as Indian country, and as such is only subject to occupation by Indian tribes, officers of the Indian Department, military posts, and such persons as may be privileged to reside and trade therein under the intercourse laws of the United States; and

Whereas those laws provide for the removal of all persons residing and trading therein without express permission of the Indian Department and agents, and also of all persons whom such agents may deem to be improper persons to reside in the Indian country; and

Whereas, in aid and support of such organized movement, it has been represented that no further action will be taken by the Government to prevent persons from going into said Territory and settling therein, but such representations are wholly without authority:

Now, therefore, for the purpose of properly protecting the interests of the Indian nations and tribes, as well as of the United States, in said Indian Territory, and of duly enforcing the laws governing the same, I, Rutherford B. Hayes, President of the United States, do admonish and warn all such persons so intending or preparing to remove upon said lands, or into said Territory, without permission of the proper agent of the Indian Department, against any attempt to so remove or settle upon any of the lands of said Territory; and I do further warn and notify any and all such persons who may so offend that they will be speedily and immediately removed therefrom by the agent, according to the laws made and provided, and that no efforts will be spared to prevent the invasion of said Territory, rumors spread by evil-disposed persons to the contrary notwithstanding; and if necessary the aid and assistance of the military forces of the United States will be invoked to carry into proper execution the laws of the United States herein referred to.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this twelfth day of February, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States the one hundred and fourth.

[SEAL.] R. B. HAYES.

By the President:
WM. M. EVARTS,
Secretary of State.

A proclamation by the President of the United States of America.

Whereas it is alleged that certain persons have, within the territory and jurisdiction of the United States, begun and set on foot preparations for an organized and forcible possession of and settlement upon the lands of what is known as the Oklahoma lands in the Indian Territory, which Territory is designated, recognized, and described by the treaties and laws of the United States and by the executive authorities as Indian country, and as such is subject to occupation by Indian tribes only;

And whereas the laws of the United States provide for the removal of all persons residing or being found in said Indian Territory without express permission of the Interior Department:

Now, therefore, for the purpose of properly protecting the interests of the Indian nations and tribes in said Territory, and that settlers may not be induced to go into a country at great expense to themselves where they cannot be allowed to remain, I, Chester A. Arthur, President of the United States, do admonish and warn all such persons so intending or preparing to remove upon said lands or into said Territory against any attempt to so remove or settle upon any of the lands of said Territory; and I do further warn and notify any and all such persons who do so offend, that they will be speedily and immediately removed therefrom by the proper officers of the Interior Department, and, if necessary, the aid and assistance of the military forces of the United States will be invoked to remove all such intruders from the said Indian Territory.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this first day of July, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

[SEAL.] CHESTER A. ARTHUR.

By the President:
FRED'K T. FRELINGHUYSEN,
Secretary of State.

IN THE SENATE OF THE UNITED STATES,
January 22, 1885.

Whereas the United States in 1866 acquired from the Creek and Seminole Indians, by treaty, certain lands situate in the Indian Territory, a portion of which have remained unoccupied until the present time; and

Whereas a widely extended belief exists that such unoccupied lands are public lands of the United States, and as such subject to homestead and pre-emption settlement, and pursuant to such belief a large number of citizens of the United States have gone upon them claiming the right to settle and acquire title thereto under the general land laws of the United States; and

Whereas it is understood that the President of the United States does not regard said lands as open to settlement, and believes it to be his duty to remove all persons who go upon the same claiming the right to settle thereon, and for that purpose has directed the expulsion of the persons now on said lands by the use of military force, and there seems to be a probability of conflict growing out of the attempt to expel said persons so claiming right and attempting to settle: Therefore,

Resolved, That the President be requested to advise the Senate as to the status of the lands in question as viewed by the Executive, the action taken, if any, to expel persons seeking to settle thereon, and the reason for the same, together with any other information in his possession bearing upon the existing controversy.

Attest:

ANSON G. McCOOK,
Secretary,
By CHAS. W. JOHNSON,
Chief Clerk.

[Indorsements.]

EXECUTIVE MANSION,
January 23, 1885.

Respectfully referred to the Secretary of Interior.
By direction of the President.

O. L. PRUDEN,
Assistant Secretary.

DEPARTMENT OF THE INTERIOR,
January 23, 1885.

Respectfully referred to the Commissioner of Indian Affairs for prompt report.

M. L. JOSLYN,
Acting Secretary.

Received back with report, January 26, 1885.

M. L. J.

DEPARTMENT OF THE INTERIOR,
Washington, January 26, 1885.

SIR: I have the honor to acknowledge receipt, by Executive reference, for report, on the 23d instant, of the Senate resolution in the following words, viz:

Whereas the United States, in 1866, acquired from the Creek and Seminole Indians by treaty certain lands situate in the Indian Territory, a portion of which have remained unoccupied until the present time; and

Whereas a widely extended belief exists that such unoccupied lands are public lands of the United States, and as such subject to homestead and pre-emption settlement, and pursuant to such belief a large number of citizens of the United States have gone upon them, claiming the right to settle and acquire title thereto under the general laws of the United States; and

Whereas it is understood that the President of the United States does not regard said lands as open to settlement, and believes it to be his duty to remove all persons who go upon the same claiming the right to settle thereon, and for that purpose has directed the expulsion of the persons now on said lands by the use of military force, and there seems to be a probability of a conflict growing out of the attempt to expel said persons so claiming right and attempting to settle: Therefore,

Resolved, That the President be requested to advise the Senate as to the status of the lands in question, as viewed by the Executive, the action taken, if any, to expel persons seeking to settle thereon, and the reason for the same, together with any other information in his possession bearing upon the existing controversy.

The matter having been referred to the Commissioner of Indian Affairs, I have the honor to inclose herewith his report thereon dated the 26th instant, which recites fully the provisions of the treaties made with the Indian tribes, ceding the lands in question to the United States, showing the conditions and purposes expressed in said treaties regarding said lands.

The Commissioner's report shows to what extent said ceded lands are now occupied by friendly Indians, and the authority for such occupation, and also the extent to which said lands remain unoccupied by any lawful authority.

The status of these ceded lands was considered by one of my predecessors, Mr. Secretary Schurz, who held in letter addressed to the Commissioner of Indian Affairs, dated April 25, 1879, as follows:

None of the land or general laws of the United States have been extended to any part of the Indian Territory, except as to crimes and punishments and other provisions regulated by the intercourse acts.

This being the condition of things, it is clear that no authorized settlement could be made by any person in the Territory except under the provisions of the intercourse laws, such person having first obtained the permission provided for in those statutes.

It may be further stated that no part of said Territory remains free from appropriation either to a direct trust assumed by treaty or by reservation for tribes thereon under Executive Order, except that portion still claimed by the State of Texas and lying between Red River and the North Fork of the same. (See the various treaties, agreements, and Executive Orders from 1866 to the present time.)

By section 2147 Revised Statutes authority is expressly granted to the officers of the Indian Department to remove from the Indian country all persons found therein contrary to law, and the President is authorized to direct the military force to be employed in such removal.

This status of the lands as thus determined has been adhered to by this Department, and on April 26, 1879, February 12, 1880, and in July, 1884, proclamations were issued by the President warning unauthorized persons against going upon these lands.

One D. L. Payne, now deceased, and his followers have made determined and persistent efforts to occupy and settle upon said lands, but this Department has used all means in its power under the laws to keep intruders out of the Territory. In this the assistance of the military has been invoked and received.

No leases or licenses for grazing cattle upon said lands have been allowed by this Department.

No freedmen have at any time been settled upon the lands in question, and it is not probable that any will be so located thereon.

Small tribes of friendly Indians from time to time have been located on selected tracts of these ceded lands. At this time there are no Indians whose removal to these lands is contemplated, and it is not probable that the condition of any of the tribes outside of the Indian Territory will, in the near future, be so changed as to render practicable their removal and settlement in the Indian Territory.

That portion of the lands commonly known as the Oklahoma country, comprising 1,887,800.47 acres, will continue to be a source of trouble while it remains in its present status.

The land is valuable for agriculture and stock-raising, and it is difficult to satisfy the people desiring homes on the public lands that it should not be treated as public lands and settlement allowed thereon.

The game having disappeared from the Indian country, there remains no longer any useful purpose for their roaming over immense tracts of unoccupied lands.

It is believed that there will be found at all times in the United States a wholesome public opinion that will demand of the Government that its contracts heretofore made with the Indians be respected in all cases where they do not conflict with the interests of the Indians and are not unjust to the people of the United States; but contracts or treaties impossible of execution, unjust and unfair to both whites and Indians, ought to be abrogated or modified by legislative action. It is not beneficial to the Indians to have millions of acres of valuable land remain unoccupied around them.

There is a general sentiment that these lands should not be withheld from settlement because they were included within the boundaries of the Indian Territory.

These lands are desirable for agricultural and grazing purposes, and every year the difficulty of keeping them from settlement will increase. That they can so be maintained for any considerable length of time is hardly possible. Objection will be made to the occupation of any part of the Indian Territory by others than Indians on the ground that the Government set apart the Territory for the exclusive use of the Indians, and covenanted that no others should reside therein. It is not denied that the treaties so provide. It is, however, within the power of the Government, with the consent of the Indians interested, to change this provision of the treaties so that these desirable unoccupied lands may be placed within the lawful reach of settlers.

Steps should be taken at once to change the present condition of affairs in the unoccupied portion of the Indian Territory. It can be done without the violation of treaties or without subjecting the Government to the charge of bad faith. The power that made the treaties may in like manner abrogate or modify them. It is not proposed to despoil the

Indians nor to compel them to accept less than the full value of whatever they surrender. It will not be wise to take an acre of this land needed by these Indians, or by the coming generation of them; but the lands now owned by the Government for the purpose before mentioned may be opened to settlement with the consent of the civilized tribes, or segregated from the lands occupied and owned by the Indians, and then opened to settlement.

However, until the existing status of the lands shall have been changed by agreements with the Indians interested, or in such other manner as may be determined upon by Congress, the integrity of the treaties heretofore made with the Indians should be maintained, and the power of the Government, to the extent necessary, should be exercised to keep intruders and all unauthorized persons off of the lands.

Very respectfully, your obedient servant,

H. M. TELLER,
Secretary.

The PRESIDENT.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS.
Washington, D. C., January 26, 1885.

SIR: I have the honor to acknowledge the receipt, by Department reference of the 23d instant, for prompt report, of a resolution of the Senate, adopted on the 22d instant, in the following words, to wit:

"Whereas the United States in 1866, acquired from the Creek and Seminole Indians by treaty certain lands, situate in the Indian Territory, a portion of which have remained unoccupied until the present time; and

"Whereas a widely-extended belief exists that such unoccupied lands are public lands of the United States, and as such subject to homestead and pre-emption settlement, and pursuant to such belief a large number of citizens of the United States have gone upon them, claiming the right to settle and acquire title thereto under the general land laws of the United States; and

"Whereas it is understood that the President of the United States does not regard said lands as open to settlement, and believes it to be his duty to remove all persons who go upon the same claiming the right to settle thereon, and for that purpose has directed the expulsion of the persons now on said lands by the use of military force, and there seems to be a probability of a conflict growing out of the attempt to expel said persons so claiming right and attempting to settle: Therefore,

"*Resolved*, That the President be requested to advise the Senate as to the status of the lands in question as viewed by the Executive, the action taken, if any, to expel persons seeking to settle thereon, and the reason for the same, together with any other information in his possession bearing upon the existing controversy."

The resolution involves two principal inquiries: (1) The status of the lands in question, as viewed by the Executive; (2) the action taken to expel persons seeking to settle thereon, and the reasons for the same.

I have the honor to report thereon as follows:

I. AS TO THE STATUS OF THE LANDS.

By the first article of the treaty with the Creeks and Seminoles, August 7, 1856 (11 Stat., 699), the Creeks ceded and conveyed to the Seminoles "the tract of country included within the following boundaries, viz: Beginning on the Canadian River a few miles east of the ninety-seventh parallel of west longitude, where Ock-hi-appo or Pond Creek empties into the same; thence due north to the North Fork of the Canadian; thence up said North Fork of the Canadian to the southern line of the Cherokee country; thence with that line west to the one hundredth parallel of west longitude; thence south along said parallel of longitude to the Canadian River; and thence down and with that river to the place of beginning"; and the United States thereby solemnly guaranteed that the Seminole Indians should hold said lands by the same title and tenure as that by which they were guaranteed and secured to the Creeks. The preamble to the treaty with the Creeks of June 14, 1866 (14 Stat., 786), recites that "the United States require of the Creeks a portion of their land whereon to settle other Indians," and by the third article of that treaty it provided that, "In compliance with the desire of the United States to locate other Indians and freedmen thereon,

the Creeks hereby cede and convey to the United States, to be sold and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain, to be divided by a line running north and south; and in consideration of the said cession of the west half of their lands, estimated to contain 3,250,560 acres, the United States agrees to pay the sum of 30 cents per acre, amounting to $975,168 in the manner hereinafter provided."

This cession is indicated on the accompanying map as follows: That portion of No. 5 which lies west of the dotted line; that portion of No. 19 which lies east of the dotted line; all of Nos. 15, 16, 17, 18, and 20; that portion of No. 11 which lies south of the Cherokee line (dotted), and on the left bank of the Cimarron River, and that portion of No. 22 which lies between the Cimarron River and the North Fork of the Canadian River, and the west line of No. 20, and the south line of the Cherokee country, or of No. 14 (S. Ex. Doc. 109, Forty-eighth Congress, first session, p. 4).

Of the consideration money agreed to be paid by the United States to the Creeks in respect of the lands so ceded, the sum of $300,000 was duly appropriated and paid in accordance with the terms of the treaty (see sundry civil act July 28, 1866, 14 Stat., 319, Indian appropriation act July 15, 1070, 16 Stat., 341), and interest at 5 per cent. on the balance, or sum of $675,168 is annually appropriated by Congress and placed to the credit of the treasurer of the Creek Nation, with the assistant treasurer at Schoharis, Mo., under the Indian appropriation act of March 3, 1875. (13 Stat., 448.)

The preamble to the treaty with the Seminoles of March 21, 1866 (14 Stat., 755), recites that "the United States, in view of its urgent necessities for more lands in the Indian Territory, requires a cession by said Seminole Nation of a part of its present reservation, and is willing to pay therefor a reasonable price, while at the same time providing new and adequate lands for them;" and the third article of that treaty provides that, "in compliance with the desire of the United States to locate other Indians and freedmen thereon, the Seminoles cede and convey to the United States their entire domain, being the tract of land ceded to the Seminole Indians by the Creek Nation under the provisions of article first, treaty of the United States with the Creeks and Seminoles, made and concluded at Washington, D. C., August 7, 1856. In consideration of said grant and cession of their lands, estimated at 2,169,080 acres, the United States agree to pay said Seminole Nation the sum of $325,362, said purchase being at the rate of 15 cents per acre."

By the same article the United States granted to the Seminoles a portion of the lands obtained from the Creeks by the treaty of 1866, above cited, sufficient to make 200,000 acres, as and for the national domain of the Seminole Nation, for which the Seminoles agreed to pay the sum of $100,000, to be deducted from the sum paid by the United States for Seminole lands under the preceding stipulations.

The 200,000 acres so sold to the Seminoles is indicated on the map by that portion of No. 5 which lies west of the dotted line. That portion lying east of the dotted line, containing 175,000 acres, was subsequently purchased from the Creeks by the Seminoles, act of August 5, 1882, 22 Stat. 265 (see S. Ex. Doc. 109, *supra*, pp. 4, 5).

The cession made by the Seminoles to the United States is represented on the accompanying map as that part of No. 19 which lies west of the dotted line; all of No. 21, and that portion of No. 22 which lies west of No. 21, and between the Canadian River and the North Fork of the Canadian, and the south line (dotted) of the Cherokee country (No. 14) and the 100° of longitude.

Of the consideration money agreed to be paid by the United States to the Seminoles in respect of the lands so ceded, the sum of $155,362 was duly appropriated and paid in accordance with the terms of the treaty (see sundry civil act, July 28, 1866, 14 Stat., 319), and interest at 5 per cent. on the balance or sum of $70,000 is annually appropriated by Congress and placed to the credit of the treasury of the Seminole Nation with the assistant treasurer at Saint Louis, Mo., under the act of April 15, 1874 (18 Stat., 29).

Upon the lands ceded to the United States for the purposes mentioned in the Creek treaty of 1866, the following-named tribes of Indians, exclusive of the Seminoles as hereinbefore mentioned, have been located, viz:

Sac and Fox, under treaty of February 18, 1867, 15 Stat., 496 (No. 17 on map, containing 479,667 acres).

Pawnee, under act of Congress of April 10, 1876, 19 Stat., 28 (that portion of No. 11 on map within the Creek cession, containing 53,005.96 acres).

Iowa, and such other Indians as the Secretary of the Interior may see fit to locate thereon, by Executive order dated August 15, 1883 (No. 16 on map, containing 228,152 acres).

Kickapoo, by Executive order dated August 15, 1883 (No. 18 on map, containing 204,466 acres).

Pottawatomie and Absentee Shawnee, under act of Congress of May 23, 1872, 17 Stat., 159 (that portion of No. 19 on the map which lies east of the dotted line, and within the Creek cession. The other portion is included in the Seminole cession and is herafter referred to).

Cheyenne and Arapaho, by Executive order of August 10, 1869 (that portion of No. 22 on the map lying within the Creek cession as hereinbefore indicated).

The remaining portions of the Creek cession, being tracts numbered 15 and 20 on the map, are hitherto unassigned. Their area will be given hereafter.

Upon the lands ceded to the United States by the Seminoles for the purposes declared in the treaty of 1866, the following tribes of Indians have been located, viz:

Pottawatomie and Absentee Shawnee, under act of Congress of May 23, 1872, 17 Stat., 159 (that portion of No. 19 on the map which lies west of the dotted line, making with that portion east of the dotted line and within the Creek cession hereinbefore referred to, a total area of 575,877 acres).

Cheyenne and Arapaho, by executive order of August 10, 1869 (that portion of No. 22 on the map covered by the Seminole cession, as hereinbefore indicated).

The remaining portion of the Seminole cession, being tract numbered 21 on the map, is hitherto unassigned.

	Acres.
It contains an area of	495,093.37
Add tract No. 15 (Creek cession), unassigned	677,155.76
Add tract No. 20 (Creek cession), unassigned	715,551.34
Making a total of	1,887,800.47

which, according to the understanding of this office, to-day constitutes what are commonly called "the Oklahoma lands."

The third article of the treaty of 1856, with the Creeks and Seminoles (11 Stat., 699) provides:

"The United States do hereby solemnly guarantee to the Seminole Indians the tract of country ceded to them by the first article of this convention, and to the Creek Indians the lands included within the boundaries defined in the second article thereof; and likewise that the same shall respectively be secured to and held by said Indians by the same title and terms by which they were guaranteed and secured to the Creek Nation by the fourteenth article of the treaty of March 24, 1832, the third article of the treaty of February 14, 1833, and by the letters patent issued to the Creek Nation, on the 11th day of August, 1852. * * * *Provided, however*, that no part of the tract of country so ceded to the Seminole Indians shall ever be sold, or otherwise disposed of, without the consent of both tribes legally given."

The fourth article provides—

"The United States do hereby solemnly agree and bind themselves, that no State or Territory shall ever pass laws for the government of the Creek or Seminole tribe of Indians, and that no portion of either of the tracts of country defined in the first and second articles of this agreement shall ever be embraced or included within or annexed to any Territory or State, nor shall either, or any part of either, ever be erected into a territory without the full and free consent of the legislative authority of the tribe owning the same."

The fifteenth article guarantees to the Creeks and Seminoles the unrestricted right of self-government so far as may be consistent with the Constitution of the United States and the laws made in pursuance thereof to regulate trade and intercourse with Indian tribes. It also gives them full jurisdiction over persons and property within their respective limits, who are citizens by birth or adoption, and provides for the removal of all other persons not legally within their limits, assisted, if necessary, by the military of the United States for that purpose, &c.

The first article of the treaty of 1866 with the Creeks (14 Stat., 785) guarantees them quiet possession of their country, and the third article provides that the eastern half of the Creek lands, being retained by them, shall be forever set apart as a home for the Creek Nation.

The tenth article prohibits the United States from legislation that shall in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs, and by the twelfth article the United States expressly reaffirms and reassumes all prior obligations not inconsistent therewith.

Similar provisions will be found in the treaty of 1866, made with the Seminoles (14 Stat., 755).

For some years past it has been claimed by interested parties that the unoccupied lands ceded to the United States by the Creeks and Seminoles under the treaties of 1866 with those tribes are in reality a part of the public domain, freed from any Indian title or trust, and as such open to public settlement under the general land laws of the United States. Upon this theory repeated attempts have been made by organized bands of citizens of the United States to take forcible possession of certain portions of said lands, which have only been frustrated by the aid of the military forces of the United States, acting under Executive proclamation hereinaftere referred to.

The provisions of the treaties of 1866 with the Creeks and Seminoles in respect of the ceded lands have already been given, and as indicating the views and policy of the Department as announced at the outset of the trouble, I invite attention to a letter dated May 1, 1879, written by the honorable Secretary of the Interior to the honorable Secretary of War upon the occasion of the first organized invasion of the Indian Territory.

After referring in detail to the several acts of Congress under which the Indian Territory was created and defined as Indian country, also to the several earlier treaties with the Cherokees, Creeks, Choctaws, and Chickasaws, and Seminoles, the honorable Secretary said—

"By these treaties title was guaranteed to the several tribes, and it was provided that the lands should never be included within the territorial limits or jurisdiction of any State or Territory, but should remain subject to the intercourse laws, which laws have, as before stated, continued in force in all parts of the Territory to the present time.

"The title acquired by the Government, by the treaties of 1866, was secured in pursuance and furtherance of the same purpose of Indian settlement which was the foundation of the original scheme.

"That purpose was the removal of Indian tribes from the limits of the political, State, and Territorial organizations, and their permanent location upon other lands sufficient for the needs of each tribe.

"These lands being ample in area for the purpose, it has become a settled policy to locate other tribes thereon as fast as arrangements can be made, and provisions have been constantly made by treaties, agreements, and acts of Congress to effect these objects.

"That purpose is expressly declared in the said treaties. The cessions by the Creeks and Seminoles are stated to have been made 'in compliance with the desire of the United States to locate other Indians and freedmen thereon.'

"These words must be held to create a trust equivalent to what would have been imposed had the language been for the purpose of locating Indians and freedmen thereon."

* * * * * * *

"The Executive order of August 10, 1869, for the Cheyennes and Arapahoes, also covers all that portion of the Creek and Seminole lands west of the ninety-eighth meridian, and south of the Cimarron River.

"It will thus be seen that the Indian country as defined by statute, embraces the whole Indian Territory. No part of it has been brought under the operation of general laws or made subject to settlement as public lands. It is attached as 'Indian country' for the enforcement of the intercourse laws alone, to the western district of Arkansas by section 533 of the Revised Statutes. It is expressly named as Indian country in the act of March 3, 1875, 'to establish the boundary between the State of Kansas and the Indian country;' which recognizes the proper closing of the surveys of the public lands upon its boundaries, as originally marked.

"The consolidated provisions of the intercourse laws embrace two entire chapters of the Revised Statutes, sections 2111 to 2157, inclusive.

"The fact that they have not in terms re-enacted the boundaries of the Indian country, should not in my judgment, be held to destroy the previously recognized location, as the direct effect of such conclusion would render inoperative the entire legislation provided for its government. Its recognition by the revised compilation and by subsequent statutes has heretofore been noted.

"The persons now attempting settlement therein allege the acquisition of these lands in 1866, as the date when they became subject to the general laws of the United States. Thirteen years have now elapsed and Congress has made no attempt to provide for them the necessary machinery for the execution of the general laws; but on the contrary, by recent enactment, has expressly provided for the continued jurisdiction of the district court of Western Arkansas. This must be held to negative any assumption that they are released from the special Indian purposes for which they were acquired, and to which they have been continuously devoted.

"For the views of the Judiciary Department, see opinion of August 12, 1873 (14 Opinions, 290), where the whole subject is elaborately considered, and which is in entire accord with the foregoing conclusions, so far as it relates to the region of country in question." (See correspondence in S. Ex. Doc. No. 20, Forty-ninth Congress, first session, pp. 15, 18, copy herewith.)

The interpretation placed by the honorable Secretary upon the various statutes and treaties referred to, in connection with the Indian Territory, was afterwards sustained by the United States court for the western district of Arkansas, in the case of the United States *v.* Payne, decided at the May term of said court, 1881, in which the same question was raised as that which forms the groundwork of the resolution now under consideration. (See 2 McCrary, U. S. C. C. Reports, 8th circuit, p. 290; also pamphlet copy decision of U. S. Judge I. C. Parker, herewith.)

That Congress still recognizes the ceded territory as Indian country, is apparent from the recent act of January 26, 1883 (22 Stats., p. 400), annexing the whole of the Indian Territory, except those portions occupied by the Cherokee, Creek, Choctaw, and Chickasaw and Seminole Indian tribes, to the United States judicial district of Kansas, and the northern district of Texas, respectively, with exclusive original jurisdiction in the United States district courts at Wichita, and Fort Scott, Kans., and at Graham, Tex., respectively, over all offenses committed against United States laws within the limits of the Territory so annexed to said district, but providing that nothing in the act shall be construed to give to said district courts of Kans. and Tex., respectively, any greater jurisdiction in that part of said Indian Territory so annexed, respectively, to said district of Kansas and said northern district of Texas, than might theretofore have been lawfully exercised thereon by the western district of Arkansas; nor shall anything in the act contained be construed to violate or impair in any respect any treaty provisions whatever.

The status of the unoccupied lands of the Indian Territory of which those mentioned in the resolution form a part, as viewed by this Department, is so fully set forth in Department letter above quoted, fortified by judicial opinions also referred to, that it appears unnecessary to add anything on the subject beyond remarking that, as has already been shown, it has been the established policy of the Department in performance of the conditions mentioned in the treaties by which the Government acquired lands or the right to use them in the Indian Territory, for Indian purposes, whenever the best interests of the Government and the Indians demanded it, to appropriate such unoccupied lands for the settlement of Indian tribes where their removal to the Indian Territory is not prohibited by existing treaty stipulations or laws.

II. AS TO THE ACTION TAKEN TO EXPEL PERSONS ATTEMPTING TO SETTLE ON SAID LANDS, AND THE REASONS FOR THE SAME.

The limited time at my disposal for the preparation of this report renders it absolutely impossible to accompany it with the usual copies of papers and correspondence in connection with this portion of the subject. I shall therefore be compelled to give a brief history only of the operations taken from the annual reports of this office, leaving the correspondence to be supplied hereafter if it be required.

In the early part of the winter of 1878–'79 an extensive scheme was organized to take forcible possession of certain lands in the Indian Territory which had been ceded to the Government for Indian purposes. Letters were published and circulated in the States surrounding the Territory by parties interested in the project, declaring that these were public lands and were open to settlement by citizens of the United States. In a short time a large number of persons from Missouri, Kansas, and Texas were discovered in the act of entering the Territory, carrying their household goods and farming implements, with the evident purpose of making permanent settlement. This unlawful conspiracy was ascertained to be so extensive as to necessitate the adoption of speedy and vigorous measures in order to prevent serious complications and trouble with the Indians. The attention of the President having been called to the matter by the Department, on the 26th of April, 1879, he issued a proclamation warning all persons who were intending or preparing to remove to the Indian Territory without permission of the proper authorities against attempting to settle upon any lands in said Territory, and notifying those who had already so offended that they would be speedily removed therefrom by Indian agents, and that, if necessary, th aid and assistance of the military would be invoked to enforce the laws in relation to such intrusion.

Accordingly, upon the recommendation of the Department, troops were posted at available points along the lines between the Indian Territory and Missouri, Kansas, and Texas to prevent unauthorized parties from entering the Territory, and detachments and scouts were detai ed to arrest and remove such intruders as could be found within its borders. By the diligent co-operation of the military authorities with the Indian Bureau, the intruders were speedily removed and the unlawful invasion was checked. (For copies of correspondence and papers in connection with this movement, see S. Ex. Doc. No. 10, Forty-sixth Congress, first session, copy herewith.)

In February, 1880, information reached this office that a large number of persons were again organizing at various places in Southern Kansas for the purpose of entering the Indian Territory and making settlements on lands therein which had been ceded to the Government for Indian purposes. To encourage this movement the promoters of the scheme had publicly represented that the President had changed his views in regard to the status of the lands in question since the issuance of his proclamation of April 26, 1879, and that in his last annual message he had admitted that said lands were public and should be settled upon, and hence they were violating neither the President's proclamation nor any law of the United States in emigrating to and locating upon such lands.

The attention of the President having been called to the matter by this Department, he issued a second proclamation, dated the 12th of February, 1880. This proclamation declared the representations made to be wholly without foundation, and to have originated only in the minds of evil-disposed persons, and again warned all parties who were intending or preparing to remove upon such lands, or into the Indian Territory, without permission of the proper authorities, against any attempt to so remove and settle upon any of the land of said Territory. It notified all persons so offending that they would be speedily removed therefrom by the Indian agents, and that, if necessary, the aid and assistance of the military would be invoked to carry into execution the laws of the United States in such case made and provided.

Upon the recommendation of this Department a proper disposition of troops was made by the War Department along the line between the Indian Territory and Kansas, to prevent unauthorized persons from entering the Territory, and details were made for the arrest and removal of such intruders as might be found within its borders. These precautions resulted in the arrest, by the military, on or about the 15th of May, 1880, of one D. L. Payne, the recognized leader of the movement, and some eleven of his followers, who had established a camp at a point about forty miles east of Fort Reno, and about a mile and a half south of the North Fork of the Canadian. Pursuant to an order of the Secretary of War, the intruders were conducted to a point outside the Territory and there discharged, with a warning not to return.

On the 15th of July, 1880, Payne and some twenty associates were again discovered in the Indian Territory; were again arrested by the United States forces, and, in pursuance of the order of the President, turned over to the United States marshal for the western district of Arkansas, to be held for prosecution under the United States laws relating to the intruders in the Indian country. The prisoners were subsequently released on bail, to appear for trial at the November term of the United States district court.

At the subsequent May term of said court a civil suit in the nature of an action of debt, brought against Payne, in the name of the United States, to recover the statutory penalty of $1,000, was tried, and judgment rendered against him.

During the year 1882 two attempts at settlement by the so-called "Oklahoma colony" were made under the leadership of D. L. Payne, first in May, when Payne, with a party of followers, was arrested in the Indian Territory by the military, and afterwards released on the Kansas border; and again in the latter part of August, when, with a party consisting of seven men and two women, and an outfit of horses, wagons, &c., he was again captured by the troops whilst endeavoring to effect a settlement at Oklahoma. Upon this last occasion, refusing to go out of the Territory peacefully, the party were disarmed and taken to Fort Reno as prisoners. Upon the recommendation of this Department they were turned over by the military to the United States civil authorities at Fort Smith, Ark., by whom, it is reported, they were subsequently released to appear at the November term of the United States court for the western district of Arkansas, to answer to civil suits for the recovery of the prescribed penalty of $1,000. During the year 1883 Payne and his party of Oklahoma colonists again made two ineffectual attempts at settlement in the Indian Territory, requiring the aid of the military, at great expense to the Government, to effect their removal. In 1884 Payne again twice sought to obtain a foothold in the Territory; first in May, when with a party of about fifty he endeavored to effect a settlement on the unoccupied land south of the Cimarron River, from whence they were dislodged by the military, not without considerable show of resistance, and later, in June, when, with largely increased numbers, he established himself on the Cherokee outlet lands, south of Hunnewell, Kans., locating settlements at various points along the Arkansas River, with headquarters at Rock Falls, 4 miles south of the Kansas line. The intruders were removed by the military on the 7th of August last, Payne and others, old offenders, being again arrested and turned over to the civil authorities at Fort Smith. (For fuller particulars of this movement see Annual Report of this office for 1884, p. xl, copy herewith.) This office is not advised what action was taken by the civil authorities at Fort Smith, but it appears from the copies of the official reports of the War Department, on file in this office, that a large body of men, under the leadership of one Couch, have again entered the T rritory, and are now encamped at or near the Cimarron River, whence they defy the military to remove them. The authority for the use of the military in such cases is conferred on the President by sections 2147 and 2150 of the Revised Statutes, which severally read as follows:

SEC. 2147. The superintendent of Indian affairs and Indian agents and sub-agents shall have authority to remove from the Indian country all persons found therein contrary to law; and the President is authorized to direct the military force to be employed in such removal.

"SEC. 2150. The military forces of the United States may be employed in such manner and under such regulations as the President may direct:

"First. In the apprehension of every person who may be in the Indian country in

violation of law, and in conveying him immediately from the Indian country by the nearest convenient and safe route to the civil authority of the Territory or judicial district in which such person shall be found, to be proceeded against in due course of law." * * *

I inclose herewith copies of Executive proclamations, dated, respectively, April 26, 1879, and February 12, 1880, hereinbefore referred to.

The resolution of the Senate is herewith returned, and a copy of this report is inclosed.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

[Senate Ex. Doc. No. 109, 48th Congress, first session.]

Letter from the Secretary of the Interior, transmitting, in response to Senate resolution of January 22, information concerning the status of certain lands in the Indian Territory.

FEBRUARY 18, 1884.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, February 14, 1884.

SIR: I have the honor to acknowledge receipt of Senate resolution of January 23 last, directing the Secretary of the Interior—

"To advise the Senate of the present status of lands in the Indian Territory other than those claimed and occupied by the five civilized tribes, the extent of each tract separately, the necessity for or obligation to keep said lands in their present condition of occupancy or otherwise, and as to whether any portion of said lands, and, if so, what portion are subject to entry under the land laws of the United States, and as to what portion, if any, could be made so subject to entry by the action of the Executive."

The matter having been referred to the Commissioner, I have the honor to inclose herewith a copy of his report thereon, with copies of the inclosures therein referred to, including a map showing the location, outline, &c., of the various reservations and tracts of country within the Indian Territory.

The Commissioner's report sets out detailed information as to the status of the lands in said Territory, other than those claimed and occupied by the five civilized tribes, the area of each reservation, &c.

The present status of the tract of land designated on the map and referred to in the papers as No. 25, which is involved in the question of disputed boundary between the Indian Territory and the State of Texas, is fully shown in the report of this Department to the President, dated January 8, 1884 (copy herewith inclosed), which has been made the subject of an Executive communication to the Congress, dated the 13th instant.

None of the land or general laws of the United States have been extended to any part of the Indian Territory, except as to crimes and punishments and other provisions regulated by the intercourse acts.

This being the case, no portion of the lands within the Indian Territory is subject to entry under the land laws of the United States, and no portion thereof can be made subject to such entry by the action of the Executive in the present status of said lands.

These lands were acquired by treaties with the various Indian nations or tribes in that Territory in 1866, to be held for Indian purposes and to some extent for the settlement of the former slaves of some of said nations on portions thereof.

Such are the purposes for which said lands are now being used or held according to the common understanding of the objects of treaties by which they were acquired, and from these arise the necessity for or obligation to keep said lands in their present condition of occupancy or otherwise.

I have the honor to be, very respectfully, your obedient servant,

H. M. TELLER,
Secretary.

To the PRESIDENT OF THE SENATE
Pro tempore.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 31, 1884.

SIR: The resolution of the Senate of the 23d instant, received by Department reference for report, directed the Secretary of the Interior—

"To advise the Senate of the present status of lands in the Indian Territory other

than those claimed and occupied by the five civilized tribes, the extent of each tract separately, the necessity for or obligation to keep said lands in their present condition of occupancy or otherwise, and as to whether any portion of said lands, and, if so, what portion are subject to entry under the land laws of the United States, and as to what portion, if any, could be made so subject to entry by the action of the Executive"—

Is herewith returned, and in answer thereto I respectfully invite attention to the following statement of facts:

The several tracts of country in the Indian Territory are indicated on the inclosed map in colors, and are numbered for convenient reference from 1 to 32, inclusive; the first five numbers indicate the tracts of country occupied by the five civilized tribes, respectively.

CHEROKEES No. 1.

By the sixteenth article of the treaty with the Cherokees, of July 19, 1866 (14 Stat., 804), it is provided that—

"The United States may settle friendly Indians in any part of the Cherokee country west of the 96°, to be taken in a compact form, in quantity not exceeding 160 acres for each member of each of said tribes thus to be settled; the boundaries of each of said districts to be distinctly marked, and the land conveyed in fee-simple to each of said tribes to be held in common or by their members in severalty as the United States may decide.

"Said land thus disposed of to be paid for to the Cherokee Nation at such price as may be agreed upon between the said parties in interest, subject to the approval of the President; and if they should not agree, then the price to be fixed by the President.

"The Cherokee Nation to retain the right of possession of and jurisdiction over all of said country west of 96° of longitude, until thus sold and occupied, after which their jurisdiction and right of possession to terminate forever as to each of said districts thus sold and occupied."

The tract of country referred to in the aforesaid article is indicated on the inclosed map as Nos. 6, 7, 8. 9, 10, 11, 12, 13, 14, except that portion of No. 11 lying south of the south line of the Cherokee country—which line is dotted on the map—and north of the Cimarron River (which tract is hereinafter referred to), and embraces an area of 8,144,772.35 acres.

CHEYENNE AND ARAPAHOES.

By the second article of the treaty with the Cheyennes and Arapahoes, proclaimed August 19, 1868 (15 Stat., 593), a tract of country west of the 96°, bounded by the Arkansas River on the east, the thirty-seventh parallel of north latitude—being the southern boundary line of the State of Kansas—on the north, and the Cimarron or Red Fork of the Arkansas River on the west and south, was set apart for the undisturbed use and occupation of said Indians, and for such other friendly tribes or individual Indians as from time to time they might be willing, with the consent of the United States, to admit among them. The tracts of land covered by the provisions of said treaty contain an area of about 5,064,896.40 acres, and are indicated on the map by numbers 8, 9, 10, 11, 12 (except that portion of T. 20 N., R. 9 and 10 E., which lies on the right bank of the Cimarron River, and north of the Cherokee line), 13 and 15, the latter of which will be referred to hereinafter, and also that portion of the Creek country (No. 2) lying on the left bank of the Cimarron River.

The Cheyennes and Arapahoes having represented that they did not understand the location of their reservation as defined by the treaty of 1868, and that they had never been upon said reservation and did not desire to go there, but that they desired to locate on the North Fork of the Canadian River, some 60 miles below Camp Supply, the reservation upon which they are now located, lying south of the Cherokee country (Nos. 22 and 23 on the map), was set apart for them by Executive order dated August 10, 1869.

Agreements were entered into with the Cheyennes and Arapahoes, under the act of May 29, 1872 (17 Stat., 190), for the extinguishment of their claim to so much of the land ceded to them by the treaty of 1868 as fell within the country mentioned in the sixteenth article of the Cherokee treaty of 1866. These agreements were submitted to Congress by the Department on December 16, 1872, upon which no final action appears to have been taken. (See H. Ex. Doc. No. 43, Forty-second Congress, third session; also S. Ex. Doc. 69, Forty-fifth Congress, second session.) None of these agreements were ever put into practical execution, and the Indians still remain on the reservation created by the Executive order aforesaid.

This Department holds that, under the treaty of 1868, with the Cheyennes and Arapahoes, such an appropriation of Cherokee lands has not been made as was contemplated by the sixteenth article of the Cherokee treaty of 1866. (See H. Ex. Doc. No. 89, Forty-seventh Congress, first session, page 36.)

The following dispositions of land have been made under the provisions of the aforesaid sixteenth article, viz:

Tracks numbered 6 and 7 on the map, containing an area of 1,570,196.30 acres to the Osage and Kansas Indians. (See act June 5, 1872, 17 Stat., 228.)

Tract numbered 8, containing 90,710.-9 acres, to the Nez Percés.

Tract numbered 9, containing 101,894.31 acres, to the Poncas. (See act March 3, 1881, 21 Stat., 422.)

Tract numbered 10, containing 129,113.20 acres, to the Otoes and Missourias. (See act of March 3, 1881, 21 Stat., 380.)

Tract numbered 11, containing 230,014.04 acres of Cherokee land. (See pages 3 and 9 of this report to the Pawnees. Act April 19, 1876, 19 Stat., 28.)

The aforesaid tracts (Nos. 6, 7, 8, 9, 10, and part of 11) have been conveyed by the Cherokees to the United States, in trust for the bands or nations severally occupying the same, under the provisions of an item in the sundry civil act of March 3, 1883. (22 Stat., 624.)

There are 6,022,754.11 acres of unassigned and unoccupied Cherokee lands west of the 96°, covered by Nos. 12, 13, and 14.

Creeks No. 2.

In the preamble to the treaty with the Creeks, of 1866 (14 Stat., 785), the object for which the United States desired a portion of the Creek country is declared to be for the settlement of other Indians thereon; and by the third article of that treaty it is provided that—

"In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Creeks hereby cede and convey to the United States, to be sold to and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain, to be divided by a line running north and south * * * estimated to contain 3,250,560 acres."

This cession is indicated on the map as follows: That portion of No. 5 which lies west of the dotted line; that portion of No. 19 which lies east of the dotted line; all of Nos. 15, 16, 17, 18, and 20; that portion of No. 11 which lies south of the Cherokee line (dotted) and on the left bank of the Cimarron River and that portion of No. 22 which lies between the Cimarron River and the north fork of the Canadian River, and the west line of No. 20 and the south line of the Cherokee country or of No. 14.

That portion of No. 5 (175,000 acres) which lies east of the dotted line was purchased from the Creeks by the Seminoles. (See act of August 5, 1882, 22 Stat., 265.)

That portion of No. 5 which lies west of the dotted line was ceded to the Seminoles by the treaty of 1866, hereinafter referred to.

No. 17 on the map, containing 479,667 acres, was set apart for the Sac and Fox Indians under the sixth article of the treaty of 1867 with said Indians. (15 Stat., 496.)

That portion of No. 11 which lies within the Creek cession, containing 53,005.96 acres, was given to the Pawnees under the provisions of the act of 1876, hereinbefore referred to.

Tracts numbered 16, containing 228,152 acres, and 18, containing 206,466 acres, were assigned respectively to the Iowas and such other Indians as the Secretary of the Interior may see fit to locate thereon, and to the Kickapoo Indians by Executive orders, dated, respectively, August 15, 1883.

That portion of tract numbered 19 which lies east of the dotted line and within the Creek cession was assigned to the Pottawatomies and absentee Shawnees under the act of May 23, 1872. (17 Stat., 159.) The other portion of No. 19 will be hereinafter referred to, the whole of which contains an area of 575,877 acres.

Nos. 15 and 20 are unassigned. They contain, respectively, 677,155.76 and 715,551.34 acres.

That portion of No. 22 which lies within the Creek cession, as hereinbefore indicated, was assigned to the Cheyennes and Arapahoes by Executive order of August 10, 1869.

Seminoles No. 5.

By the third article of the treaty with the Seminoles of March 21, 1866 (14 Stat. 756), it is provided that—

"In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Seminoles cede and convey to the United States their entire domain, being the tract of land ceded to the Seminole Indians by the Creek Nation, under the provisions of article first, treaty of the United States with the Creeks and Seminoles, made and concluded at Washington, D. C., August 7, 1856." (11 Stat., 699.)

The estimated area of the cession as made in said article is 2,169,080 acres. This cession is represented on the map as that part of No. 19 which lies west of the dotted line, all of No. 21, and that portion of No. 22 which lies west of No. 21, and between

the Canadian River and the North Fork of the Canadian, and the south line (dotted) of the Cherokee country (No. 14), and the 100°.

By the same article the United States ceded to the Seminoles 200,000 acres of the lands obtained from the Creeks by the treaty of 1866, being that portion of No. 5 on the map which lies west of the dotted line.

That portion of No. 19 on the map which was obtained from the Seminoles, and which lies west of the dotted line, was assigned to the Pottawatomies and absentee Shawnees, under the act of 1872. (17 Stat., 159.)

No. 21 is unassigned. It contains 495,093.37 acres.

That portion of No. 22 which is covered by the Seminole cession, as hereinbefore described, was assigned to the Cheyennes and Arapahoes by the Executive order of August 10, 1869.

CHOCTAWS AND CHICKASAWS, NOS. 3 AND 4.

In the preamble to the treaty of 1855 (11 Stat., 611), it is recited that—

"The United States desire that the Choctaw Indians shall relinquish all claim to any territory west of the one hundredth degree of west longitude, and also to make provision for the permanent settlement within the Cherokee country of the Wichita and certain other tribes or bands of Indians, for which purpose the Choctaws and Chickasaws are willing to lease, on reasonable terms to the United States, that portion of their common territory which is west of the ninety-eighth degree of west longitude," &c.

By the first article of that treaty the reservation for the Choctaws and Chickasaws is described and defined, and by the ninth article the Choctaws cede and relinquish their rights to any and all lands west of the 100° of west longitude, and the Choctaws and Chickasaws leased to the United States all that portion of their common territory west of the ninety-eighth degree of west longitude for the permanent settlement of the Wichitas and such other tribes or bands of Indians as the Government may desire to locate thereon, excluding from such settlement certain Indians as therein set forth.

The tracts leased to the United States by the treaty of 1855 are indicated on the map as follows: That portion of No. 22 which lies on the right bank of the Canadian River, and all of 23, 24, and 25. These tracts were ceded to the Choctaws by the treaty of 1833. (7 Stat., 333.)

It is proper to state in this connection that by the treaty of 1837 (11 Stat., 573), the Chickasaws became equally interested in the common domain of the Choctaws.

By the third article of the treaty of 1866 (14 Stat., 769), the Choctaws and Chickasaws ceded to the United States the territory west of 98° of west longitude, known as the leased district, being the tracts of country last above referred to.

Of the land ceded by the Choctaws and Chickasaws, the following dispositions have been made:

That part of the tract No. 22 on the map which lies on the right bank of the Canadian River, and the whole of tract numbered 23, are embraced in the reservation set apart for the Cheyennes and Arapahoes by the Executive order of August 10, 1869, hereinbefore referred to.

Tract numbered 23 is occupied by the Wichita and affiliated bands under an unratified agreement, dated October 19, 1872.

The area of the whole of tract numbered 22, which includes a portion of the country ceded by the Choctaws and Chickasaws, the Creeks and the Seminoles, respectively, as hereinbefore indicated, contains an area of 4,297,771 acres.

Tract numbered 23 contains an area of 743,610 acres.

Tract numbered 24, which contains an area of 2,968,893 acres, was set apart for the Kiowa and Comanche Indians by the second article of the treaty of October 21, 1867. (15 Stat., 582.)

Tract numbered 25 contains an area of 1,511,576.17 acres, and is unassigned.

There is some question as to the status of this tract. The State of Texas claims and attempts to exercise jurisdiction over it. It is called Greer County. I do not think the claim of the State to this tract of country is well founded.

Article 3 of the treaty of 1819 (8 Stat., 254), between the United States and Spain, defines the boundary between the two countries as beginning—

"On the Gulf of Mexico at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river, to the 23d degree of latitude; thence, by a due line north, to the degree of latitude where it strikes the Rio Roxo of Nachitoches or *Red River;* thence following the course of the Rio Roxo westward, to the degree of longitude 100° west from London and 23 from Washington; then crossing the said Red River, and running thence, by a due line north, to the river Arkansas. * * * The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818."

The treaty of 1828, between the United States of America and the United Mexican States (8 Stat., 374), confirms the validity of the limits described in the treaty with

Spain of 1819, and in the second article the boundary line between the two countries is described and defined as follows:

* * * "Then following the course of the Rio Roxo (or Red River) westward, to the degree of longitude 100 west from London, and 23 from Washington; then crossing the said Red River, and running thence by a line due north to the Arkansas." * * *

It is understood that the State of Texas claims that the North Fork of the Red River, as laid down on the inclosed map, is the main branch of the Red River, and the one referred to in the before-mentioned treaties. The fact is that the Red River mentioned in the treaty of 1819 with Spain, as laid down on Melish's map, referred to in that treaty, and which is now on file in the State Department, is identical with the present main Red River as delineated on the maps of the United States. Additional evidence of the identity of the Red River as represented on the Melish map, with the main Red River, as shown on the maps of the United States, consists in the fact that the map of the United States of the Republic of Mexico, by Disturnell, published in Spanish in 1848, compiled from the best authorities and laws of Mexico, and which was used in the Mexican boundary commission in surveying the boundary between the United States and the Republic of Mexico, corroborates the course of the Red River as laid down on Melish's map referred to in the treaty with Spain. In fact, neither the Melish map nor that of Disturnell shows the North Fork of the Red River, and hence the latter could not have been regarded at the contemporaneous dates of the treaties as the boundary between the United States, Spain, Mexico, or finally by the Republic of Texas. The fact that this tract having been ceded by Spain to the United States in the treaty of 1819, subsequently ratified and confirmed by the United Mexican States by the treaty of 1828, and not claimed by Mexico since her independence from Spain, stops the State of Texas from claiming it. (See letter of Commissioner of the General Land Office to Secretary of the Interior, dated May 10, 1877.)

The Judiciary Committee of the House, to whom was referred H. R. 1715, in their report, No. 1282, Forty-seventh Congress, first session, to accompany House resolution No. 223, state that if the data which they had been considering are correct, there would seem to be no doubt of the claim of the United States to the tract in dispute, and the committee reports adversely on the bill. But for reasons stated the committee were of the opinion that the State should be heard and given an opportunity to co-operate with the United States in settling the facts upon which the question in dispute rests. A substitute was reported for the appointment of a Joint Commission, the passage of which the committee recommended. (See also House Report No. 63, present Congress.)

No final settlement of this question appears ever to have been made.

A copy of House Report 1282 is herewith inclosed, accompanying which may be found a copy of the letter of the Commissioner of the General Land Office, above referred to, as well as of one from that officer, dated January 5, 1882, and a tracing of Melish's map referred to in the treaty of 1819 with Spain.

By the second article of the treaty of 1833, with the Quapaws, the United States agreed to convey to those Indians one hundred and fifty sections of land west of the State line of Missouri. By the fourth article of the treaty of 1867 (15 Stat., 514), the boundaries of the Quapaw lands were modified and reduced. That tribe now occupies and owns the tract on the map numbered 26, which contains an area of 56,685 acres.

Tract numbered 27, containing an area of 50,301 acres, was granted to the Peorias, Kaskaskias, Weas, and Piankeshaws by the twenty-first article of the treaty of 1867. (Id., 518.)

Tract numbered 28, containing an area of 14,860 acres, was granted to the Ottawas by the sixteenth article of the same treaty.

Tract numbered 29, containing an area of 13,048 acres, is the reservation of the Shawnees as diminished by the third article of the aforesaid treaty.

Tract numbered 30, containing 4,040 acres, was purchased by the Modocs from the Shawnees, by agreement dated June 23, 1874, and confirmed by an item in the Indian appropriation act, approved March 3, 1875. (18 Stat., 447.)

Tract numbered 31, containing an area of 21,406 acres, was given to the Wyandottes by the thirteenth article of the treaty of 1867. (15 Stat., 516.)

Tract numbered 32, containing an area of 51,958 acres, is the reservation of the Senecas as modified by the same treaty.

In the foregoing the status and area is given of each tract in the Indian Territory outside of those owned by the five civilized tribes. None of the lands in the Indian Territory, while they maintain their present status, are subject to entry under the land laws of the United States, and none can be made so subject to entry by the action of the Executive.

Upon the question of the status of these lands I quote from Department letter to this office dated April 25, 1879:

"By the intercourse act of June 30, 1834, this tract of territory, with others, was declared Indian country, and for its government the basis was created of the present intercourse laws as embodied in the Revised Statutes, sections 2111 to 2157. Since

that period, although the boundary of the Indian country has been varied under the operation of numerous laws, the whole Indian Territory has been regarded as Indian country, subject to no State or Territorial laws, and excepted from judicial process, except under special enactments providing for a limited and restricted jurisdiction, for the purposes of which it has been, by section 533, Revised Statutes, attached to the western district of Arkansas. (See act January 6, 1883, 22 Stat., 400.)

"None of the land or general laws of the United States have been extended to any part of the Indian Territory, except as to crimes and punishments and other provisions regulated by the intercourse acts.

"This being the condition of things, it is clear that no authorized settlement could be made by any person in the Territory except under the provisions of the intercourse laws, such persons having first obtained the permission provided for in those statutes.

"It may be further stated that no part of said Territory remains free from appropriation either to a direct trust assumed by treaty, or by reservations for tribes thereon under Executive order, except that portion still claimed by the State of Texas, and lying between Red River and the North Fork of the same."

The resolution of the Senate is herewith returned.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

Hon. SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, January 8, 1884.

SIR: I have considered the communication of August 24 last, addressed to you by Hon. Jno. Ireland, governor of Texas, and referred by you to me, relating to the boundary line between the United States and Texas.

Said communication states that the governor of Texas is authorized to form a Joint Commission with the United States, to run and define said boundary line, and a printed copy of an act of the legislature of said State to that effect, approved May 2, 1882, is inclosed with the communication. The act provides that the line shall be run as follows, viz:

"Beginning at a point where a line drawn north from the intersection of the thirty-second degree of north latitude with the western bank of the Sabine River crosses the Red River, and thence following the course of said river westwardly to the degree of longitude one hundred west from London, and twenty-three degrees west from Washington, as said line was laid down in the Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818, and designated in the treaty between the United States and Spain made February 22, A. D. 1819."

The object of the act is recited therein to be that—

"The question may be definitely settled as to the true location of the 100th degree of longitude west from London, and whether the North Fork of Red River, on the Prairie Dog Fork of said river, is the true Red River designated in the treaty [aforesaid]."

The act further provides that—

"In locating said line said Commissioners shall be guided by actual surveys and measurements, together with such well-established marks, natural and artificial, as may be found, and such well-authenticated maps as may throw light upon the subject."

The act also provides that the—

"Commissioner or Commissioners on the part of Texas shall attempt to have said survey made between the first day of July and the first day of October of the year in which said survey is made, when the ordinary stage of water in each fork of said Red River may be observed; and when the main or principal Red River is ascertained, as agreed upon in said treaty of 1819, and the point is fully designated where the 100th degree of longitude west from London and the 23d degree of longitude west from Washington crosses said Red River, the same shall be plainly marked and defined as a corner in said boundary."

The communication from the governor states that—

"In view of the fact that the United States is setting up some sort of claim to that territory known as Grier County, in this State; and inasmuch as this State feels that she has a perfect title to the territory, I respectfully and earnestly urge such steps on the part of the United States as will enable the Joint Commission to be raised. There are now a large number of people settled in the Territory, and if the restrictive claims of Texas and the United States were settled the country would rapidly fill up."

On the 6th day of January, 1882, the Secretary of the Interior was instructed, by Senate resolution of that date—

"To furnish the Senate with the report, if any, of the survey of the United States and Texas Boundary Commission, made under the provisions of the act of Congress

approved June 5, 1858, and if no final report of said Commission was made, to report that fact, together with the maps, surveys, and report of work, so far as it was prosecuted."

My predecessor accordingly, on the 19th of the same month, made such report, and transmitted therewith, as a part thereof, the report of the Commissioner of the General Land Office, of January 11, together with maps and papers. (Senate Ex. Doc. No. 70, Forty-seventh Congress, first session.)

From such report it appears that in the year 1859—

"The Joint Commission on the part of the United States and the State of Texas commenced work together on the Rio Grande, but the Texas Commissioner did not remain long in the field, on account of personal differences between himself and the United States Commissioner. A new Texas Commissioner came and assisted in the survey of a part of the west boundary, or 103d meridian west longitude."

The next year the United States Commissioner surveyed the north and east boundaries, but it does not appear that the Texas Commissioner took any part in the work.

On the 16th day of January, 1862, the Secretary of the Interior directed that the work of the Texas Boundary Commission be terminated, and during that month the work was terminated accordingly. The office work was never completed. The field work seems to have been executed, except a part of the west boundary, which was not run from 33° north latitude to 33° 45′ north latitude.

No part of said boundary survey has ever been officially agreed upon or accepted by the two Governments, as contemplated by the act of Congress authorizing the survey.

It is true, as stated in the said letter addressed to you by the governor of Texas, "that the Secretary of the Interior holds that the territory belongs to the United States." Such claim is set forth in a letter addressed to my predecessor, Secretary Schurz, May 10, 1877, by the Commissioner of the General Land Office, substantially as follows, viz:

Article 3 of the treaty of February 22, 1819, between Spain and the United States (8 Stat., 254) describes the line, so far as it relates to the territory in question, as beginning—

"On the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river to the 32d degree of latitude, where it strikes the Rio Roxo, of Natchitoches, or Red River; then following the course of the Rio Roxo westward to the degree of longitude 100 west from London and 23 from Washington; then crossing the said Red River and running thence by a line due north to the river Arkansas. * * * The whole being as laid down in Melish's Map of the United States, published at Philadelphia, improved to the 1st of January, 1818."

After the acquisition of independence by Mexico, the treaty between that country and the United States of January 12, 1828, recited and confirmed the boundary as above quoted from the treaty between the United States and Spain. (8 Stat., 372, Article 1.)

By the joint resolutions of March 1 (5 Stat., 197) and of December 29, 1845 (9 Stat., 108), Texas was admitted into the Union with "the territory properly included within and rightfully belonging to the Republic of Texas."

In the month of April, 1859, under a contract between Jones and Brown and the Commissioner of Indian Affairs, an astronomical survey was made of the 100th meridian west from Greenwich, being the boundary line between the Choctaw and Chickasaw country and Texas. The initial point of the boundary was determined to be at the intersection of said meridian with what is designated upon the maps of the General Land Office as Red River, and a monument was established 30 chains due north from the north bank of said river.

The following extract is taken from the field-notes of such survey:

"The river due south from monument is 76 chains and 85 links wide from high-water mark to high-water mark; while the North Fork of Red River is 23 chains wide. It will be sufficient to say to those interested that there can be no doubt as to the fact of its being the main branch of Red River, as was doubted by some persons with whom we had conversed relative to the matter before seeing it, for the reason the channel is larger than all the rest of its tributaries combined, besides affording its equal share of water, though like the other branches in many places the water is swallowed up by its broad and extensive sand beds, but water can in any season of the year be obtained from 1 to 3 feet from the surface in the main bed of the stream. Captain Marcy, in his report and map, also specifies it as the Keche-ah-que-hons, or main Red River."

The report of the Commissioner of the General Land Office of May 10, 1877, aforesaid, states that the—

"Joint commissioners on the part of the United States and the State of Texas proceeded to the field in May and June, 1860, and commenced work from the point where the 100th meridian crossed the Canadian River. They retraced the meridian line established by Messrs. Brown and Jones in 1859, as aforesaid, and prolonged it further

north to the intersection of the 36 30 of north latitude, or the northeast corner of the State of Texas, thereby determining the jurisdiction over said territory west of the North Fork of Red River to be within the United States."

I think, however, that this statement is erroneous, and that said commissioners did not join in such survey; but that each commissioner determined separately such line or parts thereof—the commissioner on behalf of the United States in 1859 and on the part of Texas in 1860.

The Melish map, so generally referred to, and now on file in the State Department, shows but one of the said forks of the Red River, and the one shown is delineated upon that map as lying to the south of the South Fork as marked upon modern maps, a fact not perhaps surprising, considering the somewhat imperfect knowledge that then existed as to the precise location of rivers and other natural objects upon the face of that region of country.

"At a very early period officers were sent out by the French Government to explore Red River, but their examinations appear to have extended no further than the country occupied by the Natchitoches and Caddoes, in the vicinity of the present town of Natchitoches, La. Subsequent examinations had extended our acquaintance with its upper tributaries, but we were still utterly in the dark in regard to the true geographical position of its sources." (Marcy's Exploration of the Sources of the Red River, 1852, p. 2.)

It would seem, however, that the fork or river delineated upon the Melish map must be identical with the South Fork or main Red River as shown upon the maps of the General Land Office. Although the knowledge of the country was imperfect, it is probable that the existence of the North Fork was known, and that the South Fork was marked upon the Melish map as the river, while the North Fork, being regarded as a tributary, was omitted.

It further appears that the map of "Mexico, by Disturnell, published in Spanish, in 1848, compiled from the best authorities * * * and which was used by the Mexican boundary commission in surveying the boundary between the United States and the Republic of Mexico," does not show the North Fork of the Red River, but indicates the river as laid down on the Melish map.

In the exploration made in 1852, by Captain Marcy, assisted by Captain McClellan, they traced the north branch of said Red River to its source, and thence taking a southerly direction, reached the south branch, and in June and July made an exploration of that branch from its source. This seems to have been the first authentic exploration of such branches. The report speaks of the south branch very generally as "the principal or main branch of the Red River" (pp. 49, 55, 83); and I think the physical features of that branch as given in the report prove that it is the main branch or principal river.

I have thus recited some of the prominent facts relating to said boundary line and the action heretofore taken in reference thereto, as they are disclosed by the records of this Department.

It will be seen from the foregoing that the question of the disputed boundary has never been determined between the United States and the State of Texas. The latter State desires a speedy adjustment of the question; and in view of the settlement of the territory in controversy, and of claims made to tracts of land lying therein, and in view of the civil jurisdiction which prevails or ought to prevail therein, it is important that such boundary line should be finally fixed and determined.

I am of the opinion that the one hundredth meridian of west longitude has been correctly surveyed, marked, and established, and that a resurvey of that meridian will be unnecessary.

The question to be determined is, which fork of said Red River was intended under the treaties and joint resolutions before recited to mark and designate the boundary line between Texas and the United States. I submit that this does not necessarily depend upon the relative size or formation of the forks.

I am of the opinion that it is necessary that a joint commission on the part of the United States and Texas should be formed to determine definitely such boundary line, and reccommend that the proper steps be taken for that purpose. I suggest, however, whether sufficient data of an authentic character does not already exist to enable a commission to determine the question without further surveys in the field.

Very respectfully,

H. M. TELLER, *Secretary.*

The PRESIDENT.

[House Report No. 63, Forty-eighth Congress, first session.]

Mr. LANHAM, from the Committee on the Territories, submitted the following report to accompany bill H. R. 1565:

The Committee on the Territories, to whom was referred the bill (H. R. 1565) to authorize the appointment of a commission by the President of the United States to run and mark the boundary line between a portion of the Indian Territory and the State of Texas, in connection with a similar commission to be appointed by the State of Texas, respectfully submit the following report:

The object of the bill is the ascertainment of the dividing line between a part of the Indian Territory and the State of Texas, through the instrumentality of a commission, the results of whose investigations are to be hereafter submitted to Congress, in order to settle a question of confusion of boundary.

The legislature of the State of Texas, on the 2d May, 1882, passed an act authorizing the governor of that State to appoint a commission to act in conjunction with a similar commission on the part of the United States for the purpose stated in this bill; and it is now proposed to raise the commission on the part of the United States, and to direct its action in the premises, affording thereby an opportunity to the State of Texas to co-operate with the United States in the determination of the facts out of which the controversy arises. For more than a quarter of a century it has been contended by the State of Texas that the boundary line between a portion of the Indian Territory and that State is what is now known as the North Fork of Red River up to the degrees of longitude 100 west from London and 23 west from Washington. It is claimed by the United States that what is now known as the South Fork of Red River is the boundary. The territory lying between these two streams is that which is in dispute. It is distinctively known in Texas as Greer County, and so designated on the maps of that State. If the North Fork be the boundary, this tract of country is a part of Texas; if the South Fork be the boundary, it is a part of the Indian Territory. In extent it is approximately 2,400 square miles. The dispute has its inception in the different constructions and understandings which obtain as to the true meaning and intention of the contracting parties in the treaties between the United States and Spain of date February 22, 1819, and the United States and Mexico of date January 12, 1828, with reference to the boundary line between the different countries as therein designated. So much of said treaties as is here pertinent reads as follows:

"The boundary line between the two countries, west of the Mississippi, shall begin on the Gulf of Mexico at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river to the 32d degree of latitude, thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Nachitoches or Red River; then following the course of the Rio Roxo westward to the degree of longitude 100 west from London and 23 from Washington. * * * The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818." (*Vide* U. S. Stat. at Large, relating to public treaties, pp. 713, 474.)

Texas was admitted into the Union upon this boundary line (27th December, 1845). The said Melish's map is now on file in the State Department, and upon it only one stream is laid down as Red River, and that is shown to be a continuous stream, without fork or tributaries, until after it passes far beyond the said meridian. At the dates of said treaties but one stream was known as Red River. Subsequent explorations have discovered the fact that there exist two streams (North and South Forks of Red River) which flow together before said degree of longitude is reached, and the point of controversy is, which of these streams is the Red River contemplated and intended by said treaties "as laid down on Melish's map"? While it is not the purpose of this committee to express any opinion as to the relative merits of the conflicting claims to this territory, or to declare in favor of the title of either party, believing as they do that the investigations of the commission to be appointed ought to be free and untrameled, still by way of formulating the nature and importance of the controversy, and emphasizing the necessity for its adjustment, it is considered not improper to submit the following statement, designed as evidentiary of the existence and magnitude of the question. For years, by the executive, legislative, and (in part) judicial authority of Texas, this territory has been claimed as being within the jurisdiction of that State.

In 1860 General Sam. Houston, who was then governor of Texas, in speaking of this matter, said:

"The traditionary history of Indian tribes along its banks, the evidence of Marcy's survey, and the prominent features laid down in Melish's map alike established the fact that the North Fork is the main prong of Red River." (Letter to William H. Russell, 28th of April, 1860.)

E. M. Pease, ex-governor of Texas, who began his investigations upon this subject in 1853, said:

"From a review of all the facts and circumstances, I am forced to the conclusion that Greer County (territory in dispute) rightfully belongs to Texas." (Letter to John M. Swisher, October 3, 1882.)

Ex-Governor O. M. Roberts, and ex-chief justice of the supreme court of Texas, said:

"When the line may be run, * * * and with a knowledge of all the facts, the territory of Greer County, between the forks of the two streams, will be found to belong to Texas." (Special message to Texas legislature, January 10, 1883.)

Governor John Ireland, among other things, says:

"Inasmuch as this State feels that she has a perfect title to the territory (Greer County), I respectfully and earnestly urge such steps on the part of the United States as will enable the joint commission to be raised. * * * I am aware that the Secretary of the Interior holds that the territory belongs to the United States; we are no less confident that the territory belongs to Texas." (Letter to President Arthur, August 24, 1883.)

By the legislature of Texas this territory has been indicated as an integral part of the State, defined and designated as Greer County (Revised Statutes of Texas, p. 132); it has been placed in land districts (*id.*, 548); its vacant and unappropriated public domain has been set apart, one-half for public free schools for the education of children in Texas, without reference to race or color, and the other half for the payment of the State debt (Acts Sixteenth Legislature, p. 16); it has been placed in judicial districts (Acts Sixteenth Legislature, p. 28; Acts Seventeenth Legislature, p. 8); it has been included in State senatorial and representative districts, and is a part of the eleventh Congressional district of that State.

In August, 1881, one James S. Irwin was indicted in the (State) district court of Wheeler County, Texas (to which county the territory now in dispute had by statute been attached for judicial purposes), for the murder of one Bryson, committed in Greer County. The defendant was brought to trial. A plea to the jurisdiction of the court was by him entered, upon the ground that Greer County was not a part of Texas nor subject to its jurisdiction. The said district court, Hon. Frank Willis, judge, overruled the plea, held that Greer County was a part of Texas, and that her courts had cognizance of offenses therein committed. Bryson was convicted of murder in the first degree, his punishment assessed by the jury at imprisonment in the penitentiary for life, was sentenced accordingly, and is now serving a life-term in the State prison of Texas.

In a still more recent case before the same judge it was sought by parties owning property in Greer County to resist the payment of taxes to the authorities of Texas, and, by injunction, to restrain the collection thereof, because it was alleged that Greer County was a part of the Indian Territory. The court upon hearing dissolved the injunction, and held that the assessment and collection of taxes in the said territory by the officials of Texas was legal, thus again deciding in favor of the jurisdiction and dominion of Texas over the tract of country in controversy. (Letters of Judge Willis to Mr. Lanham, dated October 19, 1883, and December 27, 1883.)

This will serve to show with what earnestness the claim of Texas is asserted.

On the other hand it is maintained with equal earnestness by the Secretary of the Interior that the territory in controversy is a part of the Indian Territory, and much has been recited by the Department of the Interior in support of the claim of the United States. (Senate Ex. Doc. No. 70, Forty-seventh Congress, first session; extract from Report of the Secretary of the Interior for 1877 on Texas boundary.) Much interesting information on this subject can also be had by consulting Senate Doc. No. 54, Thirty-second Congress, second session, which contains the exploration of the Red River of Louisiana, in the year of 1852, by Randolph B. Marcy.

This bill may be regarded in the nature of a revival of an act of Congress passed June 5, 1858 (vol. 11, U. S. Stat. at Large, page 311), providing for a Texas boundary commission, and is really no new measure. In 1854 (11th February), the legislature of Texas passed an act authorizing the appointment of a commission to co-operate with a similar commission of the United States to ascertain the identical boundary line now sought to be discovered, and in 1858 as, above stated, Congress responded to the efforts of Texas by raising the commission; but no final report has ever been made in the premises, and the matter remains to all intents and purposes as if nothing had been done. This question has received some attention from the Forty-seventh Congress. In December, 1881, a bill (No. 1715) was introduced in the House to define the boundary between the Indian Territory and the State of Texas, the purport of which was to affirmatively settle the question without the intervention of a commission, and to relinquish all claim by the United States to the territory in dispute. The committee to whom that bill was referred, while expressing an opinion adverse to the title of Texas to the disputed territory, still say:

"It is manifest, therefore, that some means should be taken to settle this dispute as

soon as possible. Conflicts are arising between the United States authorities and persons claiming to exercise rights on the disputed tract under the jurisdiction of the State of Texas; bloodshed and even death has resulted from this conflict. (H. R. Report No. 1282, Forty-seventh Congress, first session.)

"But, inasmuch as the claim is disputed, and that with the earnestness of belief on the part of Texas, and, inasmuch as none of the surveys referred to have been made with the privity of the State of Texas, the joint commission appointed (act June 5, 1858) having failed to act in concert, your committee are of the opinion that that State should have a hearing in the matter, and should have an opportunity to cooperate with the United States in settling the facts upon which the question in dispute rests. A substitute is reported for the appointment of a joint commission, the passage of which is recommended." (*Id.*, p. 4.)

No action was had at that Congress upon the joint resolution (No. 223) which accompanied the report from which the above extracts are made.

On the 24th January, 1882, there was introduced in the Senate a bill (S. 954) creating a commission as contemplated in the bill now under consideration. It passed the Senate, but has received no final attention upon the part of the House, so far as your committee is advised. Many important considerations suggest the necessity of the passage of this bill; questions of jurisdiction, of revenue and taxation, of title to real estate, of the settlement and development of the country, of public peace, and others of kindred nature, all combine in support of this measure. The question of title to the disputed territory is pretermitted in the bill, and its object is the raising of the commission for the ascertainment of facts as a basis for the future action of Congress. Your committee, therefore, recommend that the bill, with the amendments hereinafter suggested, do pass, and, further, that it receive the consideration of the House at the earliest possible opportunity.

AMENDMENTS.

Correct certain typographical errors in the first section of the preamble as indicated in the copy of the bill herewith submitted.

In the fifteenth line, page 2, section 1 of the bill, strike out the word "said" and insert the word "that."

In the twenty-fourth line, page 3, section 1 of the bill, strike out the word "crossing" and insert the words "running due north strikes."

In the first line, section 3, page 4 of the bill, insert in the blank space the words "ten thousand."

In the fourth line, section 3, page 4 of the bill, between the words "act" and "provided," insert the words "the same to be expended under the direction of the Secretary of the Treasury."

[House report No. 1282, Forty-seventh Congress, first session.]

Mr. WILLITS, from the Committee on the Judiciary, submitted the following report, to accompany H. Res. 223:

The Committee on the Judiciary, to whom was referred the bill (H. R. 1715) to define the boundary between the Indian Territory and the State of Texas, begs leave to report:

That said bill seeks by legislative enactment to define said boundary at the point in dispute as the North Fork of the Red River, instead of the South Fork, commonly called the Prairie Dog Town Fork of the Red River.

The importance of the issue involved may be seen at a glance when it is observed that the tract in dispute, lying within said two forks of Red River and bounded on the west by the one hundredth meridian of longitude west of Greenwich is about 60 miles long and 40 miles wide, probably over 2,000 square miles, and containing a large amount of valuable land. If this tract is a part of Texas the lands belong to that State under the act of her admission, while if it is a part of the area of the Indian Territory it becomes a portion of the public domain.

The real question in dispute is which branch or fork of Red River is its main branch, or the continuation of the river. The initial point of investigation is the treaty between the United States and Spain, dated February 22, 1819, in which this part of the boundary is defined as follows: After it strikes the "Rio Roxo of Nachitoches or Red River" it then follows "the course of the Rio Roxo westward to the degree of longitude 100 west from London and 23 from Washington; then crossing said Red River, and running thence by a line due north to the Arkansas, &c. * * * The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the 1st of January, 1818."

By this it will be seen that the western boundary of that portion of the United States lying on and north of the Red River was said one hundredth meridian, and that its southwestern corner was where said meridian crosses the river. At the date of that treaty this region had never been accurately explored, and the fact was not known that Red River divided into two branches before it reached said meridian; in fact, the very map referred to in the treaty makes the river a continuous stream, and does not lay down the North Fork at all. Subsequent surveys have discovered the two forks, and have definitely located said one hundredth meridian about 80 miles west of where the two forks form the river proper. The treaty with Mexico, dated January 12, 1828, recognizes the boundary as stipulated in aforesaid treaty with Spain, as did the joint resolution admitting Texas into the Union. Even at as late a date as her admission into the Union there was no knowledge of uncertainty in this boundary. Lieutenant Emory made a map for the War Department in 1844 (which is now in the Land Office), on which the North Fork is not laid down, and on that Red River traces nearly the course of the Prairie Dog Town Fork. Disturnell's map of Mexico, dated 1848, follows in this regard Emory's and Melish's maps.

The first accurate knowledge of these streams seems to have been obtained by Capt. R. B. Marcy and Capt. George B. McClellan, who, under the directions of the War Department, explored the headwaters of the Red River in 1852, and made an elaborate report, which was published under the authority of Congress. (See Ex. Doc. Senate, No. 54, Thirty-second Congress, second session.)

Even this report did not develop the data for this dispute, as Captain McClellan, doubtless from the inaccuracy of his instruments, located said one hundredth meridian below the fork of the river several miles; over one degree of longitude east of its actual location.

The question does not seem to have arisen until after the astronometrical survey of said meridian, by Messrs. Jones and Brown, in 1857 to 1859, in pursuance of a contract between them and the Commissioner of Indian Affairs, who wished to know the boundary line between the Choctaw and Chickasaw country. They located one hundreth meridian, as before stated, some 80 miles west of the junction of the two forks, and they designated the Prairie Dog Town branch as the main branch of the Red River.

It appears that this designation was at once questioned by Texas, and at the instigation of the Senators of that State Congress passed an act, approved June 5, 1858 (11 U. S. Stat., p. 319), authorizing the President, in conjunction with the State of Texas, to run and mark said boundary-line. Commissioners were appointed on the part of the United States and of Texas, who proceeded to their work in May and June, 1860.

Governor Sam Houston, of Texas, instructed the commissioners of that State as follows:

"In the prosecution, then, of the survey you will be guided by Melish's map, and insist upon the North Fork as the main Rio Roxo of Red River, and as the true boundary-line as described in the treaty of 1819."

He refers in his letter of instructions to the Marcy survey, and claims that Marcy was clearly of the opinion that the North Fork was the true Rio Roxo, or Red River proper, and further claims that said map of Melish's lays down the North Fork as the main prong.

The commissioners were unable to agree, the one on the part of the United States claiming that at and across the Red River and to a point about half-way from the North Fork to the Canadian River the line had been definitely located by Messrs. Jones and Brown the year before, and that nothing now remained but to extend the line north to latitude 36° 3′, its northern extremity. To this the commissioner on the part of Texes objected, and the latter proceeded south to the North Fork, and placed a monument thereon on the north bank 15 in diameter and 7 feet high, claiming that as the true southwest corner of Indian Territory, and reported his doings to the governor of Texas. The commissioner on the part of the United States seems never to have completed his report.

Texas adopted and acted upon the report of her commissioner as settling the question of boundary, and established the territory in dispute as a county of that State, naming it Greer, and has assumed jurisdiction over it; and by an inadvertence, not singular in our legislative history, the United States, by act of Congress approved February 24, 1879 (see 20 U. S. Stats., p. 318), included said county of Greer as a part of Texas in the northern judicial district of that State, not annexing it for judicial purposes, but recognizing it apparently as an integral part of Texas.

It is manifest, therefore, that some means should be taken to settle this dispute as soon as possible. Conflicts are arising between the United States authorities and persons claiming to exercise rights on the disputed tract under the jurisdiction of the State of Texas; bloodshed and even death has resulted from this conflict. As long ago as May, 1877, the attention of the Secretary of the Interior was called to the dispute by the War Department, and the Secretary of the Interior replied to the letter of inquiry under date of May 10, 1877, which letter we add as part of this report.

A careful review of the *facts* in the case—for the question as to which prong of the river is the true river is really a question of fact—your committee is decidedly of the opinion that the South Fork is the true boundary, and that therefore the claim of the State of Texas is unwarranted.

So far from Captain Marcy being clearly of the opinion, as Governor Houston claimed, that the North Fork is the main branch, his final opinion was in favor of the South Fork. It is true that in his diary on the day he struck the North Fork, he uses the language attributed to him, under the date of May 26, to wit:

"We are now in the immediate vicinity of the Wichita Mountains [a range of mountains lying east by northeast from the mouth of Otter Creek, which empties into the North Fork, and where he was encamped]. Red River, which passes directly through the western extremity of the chain, is different in character at the mouth of Otter Creek from what it is below the junction of the Ke-che-ah-que-ho-no [the Dog Town Fork]."

But he had been for several days traveling along the north bank of the Red River west, and struck the North Fork when it, as well as the South Fork, was swollen with the rains, and both branches he says "were apparently of about equal magnitude," and he naturally spoke of the North Fork as "Red River." But he continued up the North Fork to its source, which he located at longitude 101° 55′. Then he took a southwesterly course till he came to the headwaters of the Prairie Dog Town (or South Fork), which he located at longitude 103° 7′ 11″, and from that time on he repeatedly speaks of that branch as the main branch (see his report, pp. 55, 58, 84, 86, and 87). He also entitles his plate No. 10, which is a picture of the rock and gorge out of which the head-spring of that fork flows, as "Head of Ke-che-ah-que-ho-no or the main branch of the Red River." It is manifest that, whatever may have been his first impressions, he finally came to the conclusion, both from its greater length and size, that the South Fork is the main branch.

A reference to the letter of the Commissioner of the Land Office, hereto annexed will show that Messrs. Brown and Jones had no doubt of the South being the main branch. The reasons they give seem to be conclusive. The width of the South Fork at the one hundredth meridian is 76 chains and 85 links; that of the North Fork 23 chains. The field-notes of the commissioner on the part of the United States, acting under the act June 5, 1858, of the date of August 29, 1860, say the channel of the North Fork is only 25 chains and 44 feet; and that he found "no water on the surface, *i. e.*, river bed, but it is found by digging 2 feet 3 inches below the surface." While in his field-notes of August 30 he says:

"Struck main Red River. Main Red River where crossed, 65 chains and 38 feet; channel of running water, 22 feet; 6 inches deep. Plenty of long, large lagoons of water in the bed besides the running channel."

If the data given in these reports are correct there would seem to be no doubt of the claim of the United States to the tract in dispute, and therefore your committee report adversely to the bill referred to it.

But, inasmuch as the claim is disputed, and that with the earnestness of belief on the part of Texas, and inasmuch as none of the surveys referred to have been made with the privity of the State of Texas, the Joint Commission appointed having failed to act in concert, your committee are of the opinion that that State should have a hearing in the matter, and should have an opportunity to co-operate with the United States in settling the facts upon which the question in dispute rests. A substitute is reported for the appointment of a joint commission, the passage of which is recommended.

EXHIBIT No. 1.

[Extract from Report of the Secretary of the Interior for 1877.]

TEXAS BOUNDARY.

During the year information was communicated by the War Department to the Hon. Secretary of the Interior that the State of Texas asserted jurisdiction over that part of Indian Territory between the Red River and the North Fork of Red River as a part of her domain.

A report upon the subject having been called for from this office, the following was submitted to the Hon. Secretary of the Interior for information of the War Department:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 10, 1877.

SIR: I have the honor to acknowledge the receipt, by reference from the Department for report, of a letter from the Secretary of War, dated the 3d instant, inclosing

copy of a statement of the commanding officer at Fort Sill, to the effect that a map of Texas, in his possession, represents that part of Indian Territory bounded on the north and east by the North Fork of Red River, and on the west by the one hundredth meridian as a portion of the State of Texas called Greer County.

The Secretary of War invites attention to the remarks of the commanding general, Department of the Missouri, asking that a decision be made on the question of jurisdiction over the tract above described.

In reply, I have the honor to report that the question of the jurisdiction over that portion of country represented upon maps from this office as a part of Indian Territory, and lying between Red River and the North Fork of Red River, was originally defined to be within the United States of America:

1st. By the treaty of limits between Spain and the United States, signed February 22, 1819. (U. S. Stats. at Large, vol. 8, p. 254, art. 3.)

In this treaty the line from the south, after reaching Red River, was to follow the course of Red River westward to the degree of longitude 100 west from London, then to cross said river, and thence due north to the river Arkansas, &c., * * * "the whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the 1st of January, 1818."

2d. By treaty with the United Mexican States, January 12, 1828 (U. S. Stat., vol. 8, p. 372), art. 1 confirms the validity of the limits described in the treaty with Spain, February 22, 1819, and art. 2 quotes the boundary line.

3d. The joint resolution for annexing Texas to the United States, March 1, 1845 (Stats. at Large, vol. 5, p. 797), stipulated that the territory properly included within and rightfully belonging to the Republic of Texas may be erected into a new State, to be called the State of Texas.

4th. By joint resolution of December 29, 1845 (U. S. Stats., vol. 9, p. 108), the State of Texas was admitted into the Union in accordance with the terms of the joint resolution of March 1, 1845, cited above.

5th. By the astronomical survey made of the 100th meridian west from Greenwich, being the boundary-line between the Choctaw and Chickasaw country, in the Indian Territory and the State of Texas, in the month of April, 1859, under contract of 13th of October, 1857, between Messrs. A. H. Jones and H. M. C. Brown and the Commissioner of Indian Affairs, the initial point of the boundary was determined to be at the intersection of the said meridian with what is designated upon maps from this office as Red River, and a monument was established thirty chains due north from the north bank of the river.

The surveyors in their field-notes of the survey remark: "The river due south from monument is 76 chains and 85 links wide from high-water mark to high-water mark; while the North Fork of Red River is 23 chains wide. It will be sufficient to say to those interested that there can be no doubt as to the fact of its being the main branch of Red River, as was doubted by some persons with whom he had conversed relative to the matter before seeing it, for the reason the channel is larger than all the rest of its tributaries combined, besides affording its equal share of water, though like the other branches in many places the water is swallowed up by its broad and extensive sand-beds; but water can, at any season of the year, be obtained from 1 to 3 feet from the surface in the main bed of the stream. Captain Marcy, in his report and map, also specifies it as the Kec-he-ah-que-ho-no, or main Red River."

6th. Under the act of Congress approved June 5, 1858 (U. S. Stats., vol. 11, p. 310), authorizing the President of the United States, in conjunction with the State of Texas, to run and mark the boundary-line between the territories of the United States and the State of Texas, and by the second section of said act it was required that landmarks be established at the point of beginning on Red River, and at the other corners, &c.

Accordingly, joint commissioners on the part of the United States and the State of Texas proceeded to the field in May and June, 1860, and commenced work from the point where the 100th meridian crossed the Canadian River; they retraced the meridian line established by Messrs. Brown and Jones in 1859, as aforesaid, and prolonged it farther north to the intersection of the 36° 30′ of north latitude, or the northeast corner of the State of Texas, thereby determining the jurisdiction over said territory west of the North Fork of Red River to be within the United States.

Referring to that part of the report of Lieutenant Ruffner, chief engineer officer Department of Missouri (received with letter of Secretary of War), wherein Lieutenant Ruffner states that the tract in question is represented upon maps from the Interior Department as public land, I have to say that this land is a part of the *ceded lands to the United States by the Choctaws and Chickasaws* by treaty of April 28, 1866 (see U. S. Stats. at Large, vol. 14, page 769), and forms a part of Indian Territory, though not yet permanently located by any tribe of Indians.

The strip of land north of Texas and west of the 100th meridian, the jurisdiction over which is also referred to by Lieutenant Ruffner as *public land* belonging to the United States, and as proposed by act of Congress approved September 9, 1850 (vol. 9,

p. 446), was subsequently relinquished by the State of Texas. (See proclamation of the President, U. S. Stats. at Large, vol. 9, p. 1005 declaring act of 1850, respecting the boundaries of Texas, to be in force.)

In consideration of the foregoing statement, it is the opinion of this office that the land in question is within the jurisdiction of the United States and does not belong to the State of Texas, as the map of the State, in the possession of the commanding officer at Fort Sill, is made to represent as belonging to Texas. The opinion is based on the fact that the Red River mentioned in the treaty with Spain in 1819, as laid down on Melish's map and referred to in the treaty, is identical with the present main Red River delineated on the maps of the United States, as upon inspection of the map referred to in the treaty, and now on the files of the State Department, is made to appear. Additional evidence of the identity of the Red River as represented on the Melish map with the main Red River, as shown on the map of this office, consists in the fact that the map of the United States of the Republic of Mexico by Disturnell, published in Spain in 1848, compiled from the best authorities and laws of Mexico, and which was used by the Mexican boundary commission in surveying the boundary between the United States and the Republic of Mexico, corroborates the course of the Red River as laid down on the Melish map referred to in the aforesaid treaty with Spain in 1819.

It further appears that neither the Melish map nor that of Disturnell shows the North Fork of the Red River, and hence the latter could not have been regarded at the contemporaneous dates of the treaties as the boundary between the United States of America, Spain, Mexico, or finally the Republic of Texas.

In view, therefore, of the foregoing data the extreme portion of the Indian Territory lying west of the present North Fork of the Red River and east of the 100th meridian of west longitude from Greenwich, having been ceded by Spain to the United States, subsequently confirmed by the United Mexican States by treaty of January 12, 1828, and not claimed by Mexico since her independence from Spain, estops the State of Texas from claiming jurisdiction over that part of the Indian Territory, her own maps of later date showing the same as embraced within Greer County to the contrary notwithstanding.

The letter of the Secretary of War, with its inclosure and the wrapper, are herewith returned.

I have the honor to be, very respectfully, your obedient servant,

J. A. WILLIAMSON,
Commissioner.

Hon. CARL SCHURZ,
Secretary of the Interior.

EXHIBIT No. 2.

[Letter of Commissioner of the General Land Office.]

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFCE,
Washington, D. C., January 5, 1882.

SIR: Respectfully referring to your letter of the 23d ultimo, requesting a copy of the report (if completed) on the survey of the United States and Texas boundary made under the provisions of the act of Congress approved June 5, 1858, I have the honor to state as follows:

The said survey was made under the direction of the honorable Secretary of the Interior, and the work in the field having been completed, the commissioner on the part of the United States, Mr. John H. Clark, was engaged in the preparation of his report, maps, &c., in the summer of 1861, in the office of the Secretary.

On August 3, 1861, the then Commissioner of the General Land Office, by authority of the Secretary, directed Mr. Clark to transfer the archives and personnel of the survey to this office, which was accordingly done.

In response to a call from this office September 19, 1861, Mr. Clark, on September 30, 1861, submitted the report of the transactions of the boundary commission referred to in your letter, copy of which I herewith inclose.

Under date of October 3, 1861, this office requested Mr. Clark to close the work by the middle of the following month. It appears, however, that Mr. Clark was unable to complete the work within the time required.

On the 16th of January, 1862, the honorable Secretary of the Interior directed the immediate termination of the commission, and on January 25, 1862, the property belonging to the commission was transferred to this office.

The maps, &c., of the survey being in an unfinished condition, the report has never been made; hence I am unable to furnish the complete report which you request.

Very respectfully,

N. C. McFARLAND, *Commissioner.*

Hon. S. B. MAXEY,
United States Senate.

Decision of Judge I. C. Parker on the status of lands in the Indian Territory.

OKLAHOMA.

(United States *vs.* D. L. Payne.)

FORT SMITH, ARK., *May* 11, 1881.

In the district court of the United States for the western district of Arkansas, at the May term thereof, A. D. 1881.

This is a civil suit in the nature of an action of debt to recover from defendant a penalty of $1,000 for having violated the law of the United States by being in the Indian country contrary to said law. The complaint charges that the defendant heretofore, to wit, on the 5th day of September, A. D. 1879, being in the Indian country contrary to law, was removed by the military forces of the United States, and that afterwards, to wit, on the 10th day of August, A. D. 1880, he, the said defendant, did return to said Indian country and was found therein contrary to the form of the statute in such case made and provided. For this reason plaintiff claims an action hath accrued against the defendant.

The defendant files his amended answer, in which he denies that he owes and is indebted to the plaintiff in the sum of $1,000 or any other sum in manner and form as stated in the complaint. He denies that on the 3d day of May, 1880, or the 10th day of August of that year, or at any other time, he was in the Indian country or any part thereof. He denies that he was at any time removed from the Indian country or any part thereof. Defendant further claims that by a treaty entered into between the United States and the Seminole tribe of Indians on March 21, 1866, they sold to the United States a large tract of land, then owned by said tribe in the country known as the Indian Territory situated between the Canadian River and the north fork of the Canadian River, and between the 97th and 98th degrees of west longitude. That said lands have ever since been and are now the property of the United States by an absolute and perfect title in fee-simple, and that they are a part of the public domain of the United States. That there is no Indian nation or tribe that has any title or right to any part of the same or any occupancy or possession thereof.

Defendant further answers that he made a settlement on section 14, in township 11 north, of range 3 west, of the Indian meridian, under the pre-emption and homestead laws enacted by the Congress of the United States; that said section is a part of the land so purchased and acquired by the United States from the Seminole Indians, and that it is situated within 40 miles of the line of the Atlantic and Pacific Railroad, to-wit, about 30 miles therefrom; that said settlement was made by him on or about the 1st day of May, 1880; that on the 15th of that month an officer of the United States Army and a squad of soldiers arrested him on or near said section 14 and removed him from said lands and from said so-called Indian Territory; that he returned to his said claim and settlement on or about the 4th day of July in said year, and was again, on or about the 15th day of said month, arrested at or near the same place by the officers and soldiers of the United States Army and forcibly expelled from said lands and from said Territory.

To this answer plaintiff files a demurrer, and for cause thereof says: 1st. That said answer does not set up sufficient facts to constitute a defense to plaintiff's complaint. 2d. That defendant's said answer is otherwise defective, and wholly insufficient to constitute a defense to plaintiff's complaint, and does not entitle him to the relief prayed for.

William H. H. Clayton, United States district attorney, and D. W. C. Duncan, for plaintiff; Thomas H. Barnes, William Walker, and James M. Baker for defendant.

PARKER, J.:

The pleadings in this case seem to raise and present to the court for decision all the points there are in the case. The complaint alleges a state of facts which, if true, would render the defendant liable to the penalty.

Sections 2147 and 2148 Rev. Stat., 374. No white person has a right to go into the Indian country to reside without a permit, and if such person has once been put out and returns, he becomes liable to a penalty of $1,000, to be recovered in an action like the present one. The defendant denies that he is an intruder into the Indian country. He does not stop with this denial, but proceeds in his answer to set up certain facts, but says these facts do not make him liable, but that he was an American citizen legally and rightfully in the country.

The demurrer admits his facts, but says on them he is liable.

The question presented for decision in this case is: Was the land upon which the defendant had attempted to make a settlement, and the place where he was arrested

the first and second times, a part of or within the Indian country? If so, upon the other facts, he is liable to the penalty, because he admits his arrest and expulsion from the country, and under the law the liability arises upon a second intrusion into the Indian country after having been once expelled. The defendant claims that the land purchased from the Seminoles by the United States, by the treaty made with them March 21, 1866, is a part of the public lands of the United States, and as such is open to homestead and pre-emption settlement. That he made a settlement thereon under the laws of the United States relating to homestead and pre-emptions. He does not show that he has taken any of the requisite steps to give him even an inchoate homestead or pre-emption right. He could not, of course, if these lands were subject to the homestead and pre-emption laws, hold what he claims to have settled on, to wit, section 14, because, under the law, one person can only homestead or pre-empt 160 acres. (Sections 2259 and 2289, Rev. Stat.)

Did he have the right to homestead or pre-empt any of the land conveyed by the Seminole treaty of 1866?

Section 2258 Rev. Stat. provides "that lands included in any *reservation* by *any treaty, law, or proclamation* of the President *for any purpose* shall not be subject to the right of pre-emption unless otherwise specially provided by law." Section 2289 of the same statute provides "that every person who is the head of a family or who has arrived at the age of twenty-one years and is a citizen of the United States, or has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter one quarter-section or a less quantity of *unappropriated* public lands upon which such person may have filed a pre-emption claim or which may at the time the application is made be subject to pre-emption at one dollar and twenty-five cents an acre." Are these lands *reserved* by any treaty, law, or proclamation of the President? If so, they are not subject to pre-emption settlement. Are they unappropriated public lands? If they are appropriated for another purpose than homestead settlement, or if they are not subject to pre-emption, they cannot be settled upon and acquired under the homestead laws. If these lands are included in a reservation for any lawful purpose made by treaty, law, or proclamation of the President, they cannot be settled upon and claimed by citizens of the United States, and the defendant would be wrongfully upon them. The lands upon which the defendant claims to have settled were originally a part of the Louisiana purchase. By such purchase the title thereto was vested in the United States. By the act of Congress of May 28, 1830, the President was authorized to set apart the country now known as the Indian country or Indian Territory into certain districts for the use and occupancy of Indians to be removed there from east of the Mississippi River.

The provisions of the act of 1830 were supplemented by treaties bargaining and conveying certain tracts to certain tribes, by far the greater part of it having been conveyed to five nations, to wit, the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles. These assignments were made to these tribes by the several treaties made with them, and the President, under the act of 1830, put them in possession thereof.

The lands in controversy are a part of those which were, by the treaty of the 14th of February, 1833, made with the Creeks, set apart to them.

By the treaty of the 7th of August, 1856, made between the United States and the Creeks, they conveyed these lands to the Seminoles, provided, however, that the same should not be sold or otherwise disposed of without the consent of both tribes legally given. The Seminoles, by the third article of the treaty made between them and the United States, March 21, 1866, provided as follows: "In compliance *with a desire of the United States to locate other Indians and freedmen thereon*, the Seminoles cede and convey to the United States their entire domain, being the tract of land ceded to the Seminole Indians by the Creek Nation under the provisions of article 1, treaty of the United States with the Creeks and Seminoles made and concluded at Washington, D. C., August 7, 1856." This conveyance was made by the Seminoles, as is recited in the preamble to this treaty, "in view of the urgent necessity of the United States for more land in the Indian Territory." The Creeks, by the seventh article of the treaty of June, 1866, consented to this cession by the Seminoles.

To my mind this language used in the third article of the Seminole treaty amounts to a conveyance of the title of the land described to the United States. But the fact that the title of the land is in the United States does not necessarily make it that part of the public domain which is subject to settlement by citizens of the United States under the homestead and pre-emption laws, because those laws are explicit that any lands which have been *reserved* by any treaty, law, or proclamation of the President are no part of the public lands of the United States subject to those laws so long as such reservation continues; and when any part of the public lands have been once lawfully reserved that reservation cannot be set aside except by a clear and explicit act of the lawful authority, showing thereby clearly a purpose to open to settlement by the citizen the land reserved.

If the language of this third article of the Seminole treaty amounts to a reservation, then the lands sold by the terms of said treaty to the United States by the Seminoles

and lying in the Indian country between the Canadian River and the North Fork of the Canadian River, and between the 97th and 98th degrees of west longitude, and a part of which this defendant was expelled from and to which he returned a second time and upon which he was a second time arrested, are not such lands as persons have a right to treat as public lands and settle upon under the homestead and pre-emption laws. Did the power which made this treaty have a right to reserve this land? Most certainly. The treaty-making power has a right to convey title to the lands of the United States without an act of Congress, and if a treaty acts directly on the subject of the grant it is equivalent to an act of Congress and the grantee has a good title.

Holden *v.* Joy (17 Wallace, 247); United States *v.* Brooks (10 Howard, 442); Meigs *v.* McClung (9 Cranch, 11); as long ago as the Cherokee Nation *v.* Georgia (5 Pet., 1); and Worcester *v.* The State of Georgia (6 Pet., 515). The Supreme Court of the United States, speaking through that most eminent of all American judges, Chief Justice John Marshall, held that a treaty with an Indian tribe was like a treaty with a foreign nation as far as the powers of the contracting parties were concerned; that it, like a treaty with a foreign power, was a law equally as sacred and equally as binding as a law of Congress. Now, if the treaty-making power can convey title it can reserve a part of the public domain for a specific purpose, because this is but the exercise of a less higher power than that which conveys title. So can the President of the United States by an Executive order reserve a part of the public domain for a specific lawful purpose. Wolcott *v.* Des Moines Co. (5 Wallace, 681); Grisar *v.* McDowell (6 Wallace, 363). In the latter case the court says, "From an early period in the history of the Government it has been the practice of the President to order lands to be reserved from sale and set apart for public purposes, and that numerous acts of Congress recognize the authority of the President in this respect as competent authority." The United States court for Nevada, in the case of The United States *v.* John Leathers, has decided the same thing. So can Congress by law reserve a part of the public domain.

Then we find a reservation may be made, either by treaty, Executive order, or by act of Congress, and all of these methods are expressly recognized by the homestead and pre-emption laws. Then we find the power that made this treaty with the Seminoles had the right to reserve these lands for an Indian reservation or any public purpose. The question is, has this power done so in this case? Did the treaty-making power employ such languge as to indicate its purpose to reserve the land in controversy? No set form of words or phrases are necessary to set aside a reservation. The sovereign is not parting with the title, but only setting it apart to be used for a specific public purpose. It is enough if there are sufficient words to indicate the purpose of the power that can act to show that in the given case it intended to act. Article 3 of the Seminole treaty says, "In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Seminoles cede and convey," &c. And in the preamble it is recited that "in view of the urgent necessities of the United States for more lands in the Indian Territory," it requires a cession by said Seminole Nation of a part of its present reservation.

What was this urgent necessity for more lands in the Indian Territory? Certainly not to settle citizens of the United States upon, because it is a part of the open history of the times that both the legislative and executive departments of the Government have constantly and all the time refused to do this, and the Executive Department has at all times put forth its arm to keep citizens of the United States out of that country. Then could it have been desired by the Government for settlement by the citizens of the United States under the homestead and pre-emption laws? Hardly in the face of the fact already cited, and of the further fact that the Government had grven its pledges by its treaties and laws from the organization and occupation of that country by the Indians that, with the exception of a few privileged persons, white settlers were to be kept out of that country. Those pledges remain to this day, and the Government, through its Executive, whose duty it is to execute them, has constantly sought to make them good. All the tribes in the Indian Territory have implied or express pledges made in treaties or laws of the United States that they are to be free from intrusion of white persons. Whether this policy is right or wrong, whether it is a good or bad one, persons may entertain a difference of opinion. The courts did not establish it, but the law-making power did. The courts cannot change it, as they do not make the laws. It must be changed by the power that established it.

Can it be presumed in the face of these pledges that the United States felt an urgent necessity pressing upon it for this comparatively small tract of country between the Canadian Rivers that it might open it to white settlement, surrounded as it is on all sides by Indian reservations, occupied by different tribes of Indians, except on the north, and there we find the Cherokee lands, which, by the express terms of the treaty of July 19, 1866, are to be sold and occupied by friendly Indians? Then, again, we find by a treaty made with that tribe February 27, 1867, the United States settled upon a tract thirty miles square of this identical land conveyed by the Seminole

tribe, the Pottawatomie tribe of Indians. Then, again, upon a part of this thirty-mile tract, by an act of Congress of May 23, 1872, the Absentee Shawnees have been settled, so that now there remains of this whole Seminole cession only about twenty-odd townships which is not at this time actually occupied by Indians. Again, by Executive order of the President of August 10, 1869, a large portion of this country obtained from the Seminoles was assigned for temporary occupation by the Cheyennes and Arapahoes. These acts of the Government plainly indicated its purpose in agreeing to the third article of the Seminole treaty, and what it accepted these lands for.

Now, we must look to the acts of the Government since the adoption of this treaty in order to understand its purpose. We find that in the year 1866 it entered upon the policy of settling tribes of Indians, other than the five civilized tribes, in the Indian country. Since that time, by treaties, laws, and Executive orders of the President, it has settled upon reservations in the Indian country the Cheyennes, Arapahoes, the Kiowas, the Comanches, the Wichitas, the Pawnees, the Sac and Fox, the Nez Percés, the Poncas, the Modocs, the Kansas, the Osages, the Pottawatomies, the Absentee Shawnees, as well as some other small tribes. This explains why the treaty-making power thought on March 21, 1866, that there was an urgent necessity of the Government for more lands in the Indian Territory. This shows that the Government had not only a desire to locate other Indians in the Indian Territory, but to a great extent it has consummated that desire. It is a matter of public history that a number of these tribes which have been removed to the Indian country, taking advantage of the embarrassment of the Government growing out of the war of the rebellion, had gone on the war-path. The Government was desirous of securing peace with them and of settling them upon reservations where they could be civilized. It entered into treaties by which they were to be, and were, removed to the Indian country. Then, again, the white people in other localities were pressing on other tribes and demanding of the Government their removal. To get them out of the way of the white settlements, and to locate them where they would be free from intrusion by the whites, they were removed to the Indian country. 'Tis true but few of these tribes were settled on the lands in controversy, but I cite the conduct of the Government in order to arrive at its policy in regard to the Indian country, and from that policy to receive aid in the construction of the third article of the Seminole treaty. The Government wanted to locate other Indians and freedmen thereon.

The meaning of the United States in regard to locating other Indians therein is plain when we consider what action it has taken since that time in regard thereto. True, Congress has recently prohibited the location of certain other tribes of Indians in that country, but it has not by any law changed the general policy. It may have considered that these tribes were not proper ones to bring in contact with other Indians more civilized. What did the Government mean by locating "freedmen thereon"?

Let us again go back to the history of the time when this treaty was made. We find that colored people were held in slavery in all the civilized tribes of the Indian Territory. Slavery was abolished there as well as elsewhere in the United States by the emancipation proclamation of the President, and by the 13th amendment to the Constitution, adopted the 13th of December, 1865, and such abolition of slavery was recognized by these tribes in the several treaties made with them in 1866.

The Government was desirous of protecting these freedmen and of securing them homes. It was not known how well the several Indian tribes who had held them in slavery would observe their pledges to secure them the same rights they enjoyed. It was feared that prejudice growing out of their former condition as slaves and of race would be so strong against them that they would not be protected by the Indians. The Government had given them the boon of freedom, and it was in duty bound to secure it, in all that the term implied, to them. The Government feared that to do this it might be necessary to settle them in a colony by themselves. This purpose of the Government, should it become necessary, was manifested by the terms of the Choctaw treaty of April 15, 1866. Therefore, in making the treaty with the Seminoles, it sought to provide a home for such freedmen as had been held in slavery by the Indians in the Indian Territory, should that necessity occur to secure them in their rights. In the face of the surrounding condition of things at the time this treaty was made, we must conclude the Government meant these freedmen who had been slaves in the Indian Territory, and none others, and these could only be settled on this land by the authority of and with the permission of the Government. Colored persons who were never held as slaves in the Indian country, but who may have been slaves elsewhere, are like other citizens of the United States, and have no more right in the Indian country than other citizens of the United States.

Again, if this land is open to homestead or pre-emption settlement, it has been so ever since the treaty of 1866 with the Seminoles, and yet the Goverment has never attached it to any land district. In perfecting title under the law the settler has to take certain preliminary steps. It has been the policy of the Government, when lands were open to settlement, as soon afterward as possible to establish a new land district or attach the lands thrown open to settlement to some district already estab-

lished. It has not done so in this case, showing again how one of the parties to this treaty, which is a contract between the United States and the Seminoles, has construed it.

A treaty, like a statute, must be construed to give it effect if possible, and courts always adhere to this rule. In construing this treaty we have a right to take into consideration the situation of the parties to it at the time it was made, the property which is the subject-matter of the treaty, and the intention and purposes of the parties in making the treaty. To get at this intention we have a right to consider the construction the parties to the treaty—and who were to be affected by it—have given it, and what has been their action under it. The action of the United States, which I have cited, is sufficient to show its construction of the treaty. It is a matter of public notoriety that the other party to the treaty has agreed with the United States in its construction. Then we have both parties to it agreeing upon the same construction. That is the construction to be taken as the true one unless the parties to it were mutually led into this construction by fraud, accident, or mistake. In a case where the mutual construction was in the face of the language used and the rights of third persons had intervened, the language would be taken as governing. But in this case the rights of the third person is only inchoate at best, and it comes through and under one of the contracting parties, the United States; is not yet a vested right, and is claimed with the full knowledge of the party claiming the right, of the condition of this land when he set up his right.

Therefore there is no hardship on him. It must be remembered that the United States is the custodian of all the lands in the United States, whether reserved or unreserved, and it is its power and province to say by either law, treaty, or Executive order of the President when these lands are open to settlement by the citizen. Has it said that these lands in controversy, by the third article of the Seminole treaty, are so open to settlement? The reservation of lands for any specific purpose by the Government, if expressed in the most accurate, concise, and precise form of words is but an expression of a desire of the Government to use them for that purpose. It does not part with its title by reserving them, but simply gives notice to all the world that it desires them for a certain purpose; therefore the same precision and accuracy is not required as in case of a conveyance. Does not the Government express its desire by the language of this treaty? The language is: "In compliance with a *desire of the United States to locate other Indians and freedmen thereon*," the Indians convey, &c. There is an expression of all that could be done by the most formal instrument, to wit, the desire or purpose of the Government. The Government for fifteen years, judging from its action, thought it had given expression to its desire sufficiently plain to reserve these lands. The Indians have thought so too, and so I think. I am of the opinion that it is sufficient to set aside the land now in controversy for the purpose expressed in this third article of the treaty. But it is claimed in this case that this land is open to settlement by virtue of the sixth section of an act of Congress, approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas." That section is as follows:

"That the President of the United States shall cause the lands to be surveyed for 40 miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad, and the odd sections of land hereby granted shall not be liable to sale or entry or preemption before or after they are surveyed, except by said company, as provided in this act; but the provisions of the act of September, 1841, granting pre-emption rights and the acts amendatory thereof, and the act entitled an act to secure homesteads to actual settlers on the public domain, approved May 20, 1862, shall be, and the same are hereby, extended *to all other lands* on the line of said road when surveyed, excepting those hereby granted to said company." It is further claimed that this grant of lands to this railroad company applies to lands in the Indian country. The Executive Department of the Government decided, through the Commissioner of the General Land Office, October 13, 1877, in the following language that it did not. "But in addition," he says, "I think the demand cannot be complied with for the reason that the company has no grant of lands in the Indian Territory. That without entering upon the question of the intent of Congress to make a present grant of such lands, which I do not understand the company to claim, an ultimate grant even was not contemplated by the act, except such grant might be acquired from the Indians by the company." Whether this is so or not, I do not decide, because it is not necessary in this case. It must be remembered that this treaty with the Seminoles was prior to the act of Congress just cited. The first was adopted March 21, 1866, and the latter July 25, 1866.

It is a principle of the law, declared by the Supreme Court of the United States in Wilcox *vs.* Jackson (13 Pet., 266), that "Whenever a tract of land has been appropriated to the public use it is severed from the mass of the public domain, and subsequent laws of sale are not construed to embrace it though they do not in terms except

it." Again, the Supreme Court, in the Leavenworth, Lawrence and Galveston Road *vs.* United States, 2 Otto, 733, affirms the doctrine in Wilcox *vs.* Jackson, "that a tract lawfully appropriated to any purpose becomes thereafter severed from the mass of public lands, and that no subsequent law or proclamation will be construed to embrace it or to operate upon it, although no exception is made of it. This doctrine," says the court, "applies with more force to Indian than to military reservations." And again it says: "Congress cannot be supposed to include them by a subsequent law general in terms." If this land in controversy was by the 3d article of the Seminole treaty reserved for Indian settlement by competent authority, then it was an Indian reservation as much as if it was actually occupied by Indians by authority of the Government, it having been reserved prior to the passage of the railroad grant and charter. This law being general in its terms, not making any special reference to these lands, cannot be held to embrace them, although it declares that all other lands except those granted to the railroad are open to settlement. I think these cases are conclusive on this point.

But again, suppose we take the language of the section and undertake to apply the pre-emption law of 1841 and the homestead law of 1862 "to all other lands," to what conclusion must we come? If we apply these laws we must apply the whole of them, and in such application we find that these laws did not apply to any lands reserved by treaty, law of Congress, or proclamation of the President. These lands being reserved they did not apply to them any more than the homestead and pre-emption laws now in force apply to them, and the words "all other lands on the line of said road," must, under the law, be construed to mean all other lands not reserved by treaty, law of Congress, or proclamation of the President. I think, therefore, from the authorities I have cited, and from the language of this section, that there is no doubt that this act of Congress has not changed the lands in controversy from the condition of a reservation They being in that condition they can only be taken out of it by clear and specific language expressive of the will of the power which under the law can restore them to the public domain subject to homestead and pre-emption settlement by the citizen.

One other point is necessary to be decided in this case, and that is whether these lands, although they may be reserved, are a part of the Indian country, because lands may be reserved and yet not be a part of the Indian country. The Government can and does reserve lands for a variety of purposes other than Indian reservations; for forts, arsenals, dock and navy yards, national parks, &c., and because they may be reserved they do not necessarily become a part of the Indian country. It is necessary they should be a part of such country, in this case, to make the defendant liable to the penalty sued for, because, although these lands may be reserved from settlement, and the defendant would have no right to settle on them, and could be by competent authority ejected from them, yet to make him liable under this statute he must have intruded into the Indian country, been put out once, and returned thereto a second time. The defendant was the first and second time arrested upon lands which were originally the lands of the Creeks. They were defined by treaty with them, and when owned by them were clearly and unmistakably Indian country. By treaty of the 7th of August, 1856, the Creeks conveyed these lands to the Seminoles. They were taken possession of and occupied by the Seminoles until they were conveyed to the United States. They were most certainly a part of the Indian country all this time. They are within what is well known and recognized by the Government of the United States as the exterior boundaries of what is called and known as the Indian country. These boundaries have been established by acts of Congress, treaties, and proclamations of the President. The case of The American Fur Company *vs.* United States, 2 Pet., 137, decides "that a country which has been purchased of the Indians, and which is not included within the boundary line defining the Indian country, ceases to be Indian country." This is undoubtedly true. But it does not decide that a country purchased from the Indians *ipso facto* ceases to be Indian country.

It may be within the exterior boundaries of their country over which the laws of the United States for the government of the Indian country extend, or there may be some law or treaty or Executive order under which it still continues to be Indian country, as in the case of the United States *vs.* 43 Gallons of Whisky, 3 Otto, 188.

The case of Bates *vs.* Clark, 5 Otto, 204, decides that as soon as Indians part with their title the land ceases to be Indian country without any further act of Congress, *unless by the treaty by which the Indians parted with their title, or by some act of Congress, a different rule was made applicable to the case.* I think it clear in this case that by the terms of the Seminole treaty a different rule was made applicable, and this view of the case is strengthened when we consider the purpose for which the Government purchased it; the fact that it is surrounded on all sides by other Indian reservations, and the further fact that it is within the exterior boundaries of what is now and what has been for over a quarter of a century known and recognized by the Government of the United States, by the surrounding States, and by the public generally as *the Indian country.*

The moment the Government purchased the land, and by the same act simultaneous with such purchase, it reserved it for a specific purpose. That purpose was the same as the one for which the land had been used for thirty-three years, ever since the Creek treaty of the 14th of February, 1833.

It was Indian country beyond question while the Creeks and Seminoles occupied it. The Government obtained it for Indian occupancy. Of course it could not at the same moment make the treaty and transplant other tribes on the land, but we find it commenced to do so as soon thereafter as possible. It has gone on and treated it as devoted to that purpose by settling on a large portion of it Indian tribes. It cannot be presumed that for fifteen years the Government has had a tract of country within the very heart of the Indian country which it purchased, and has permitted to remain in such condition as it might become a place of refuge for criminals and outlaws who could depredate and prey upon their Indian neighbors and others with immunity from punishment; especially when the Government has pledged protection and security from intruders to all the tribes in the Indian country. Yet this is so if this is not Indian country, because the laws of the United States would not extend over it, and it would not be within the jurisdiction of any State or Territory. It never intended this. It did not by its treaty of purchase with the Seminoles do it. By its act of reservation of this country, situated as it was, and being reserved for the purpose it was, it continued still to be Indian country as much as if it had been at that time entirely occupied by Indians. Now, in the estimation of many persons, it may be desirable to open this country for settlement. If so, it must be done by the power that has a right under the Constitution and laws of the country to do it. It must not be asked or expected that to accomplish this end the courts will break or even bend the timbers of the law.

Especially when that power in the Government which could act, has time and again refused to act. The courts do not make the laws. They interpret, construe, and execute them as they find them.

From my views of the law, as applicable to this case, upon the facts set up by the defendant, he is liable for the penalty under the law, and the demurrer to the answer must be sustained.

It is so ordered.

A proclamation by the President of the United States of America.

Whereas it has become known to me that certain evil-disposed persons have, within the territory and jurisdiction of the United States, begun and set on foot preparations for an organized and forcible possession of and settlement upon the lands of what is known as the Indian Territory, west of the State of Arkansas, which Territory is designated, recognized, and described by the treaties and laws of the United States and by the executive authorities as Indian country, and as such is only subject to occupation by Indian tribes, officers of the Indian Department, military posts, and such persons as may be privileged to reside and trade therein under the intercourse laws of the United States;

And whereas those laws provide for the removal of all persons residing and trading therein without express permission of the Indian Department and agents, and also of all persons whom such agents may deem to be improper persons to reside in the Indian country;

And whereas in aid and support of such organized movement it has been represented that no further action will be taken by the Government to prevent persons from going into said Territory and settling therein, but such representations are wholly without authority:

Now, therefore, for the purpose of properly protecting the interests of the Indian nations and tribes, as well as of the United States in said Indian Territory, and of duly enforcing the laws governing the same, I, Rutherford B. Hayes, President of the United States, do admonish and warn all such persons so intending or preparing to remove upon said lands, or into said Territory, without permission of the proper agent of the Indian Department, against any attempt to so remove or settle upon any of the lands of said Territory; and I do further warn and notify any and all such persons who may so offend that they will be speedily and immediately removed therefrom by the agent according to the laws made and provided, and that no efforts will be spared to prevent the invasion of said Territory, rumors spread by evil-disposed persons to the contrary notwithstanding; and if necessary the aid and assistance of the military forces of the United States will be invoked to carry into proper execution the laws of the United States herein referred to.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this twelfth day of February, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States the one hundred and fourth.

[SEAL.]

R. B. HAYES.

By the President:

WM. M. EVARTS.
Secretary of State.

UNAUTHORIZED SETTLEMENT IN THE INDIAN TERRITORY.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 25, 1879.

The Commissioner of Indian Affairs:

SIR: I am in receipt of the papers accompanying your letter of the 19th instant, and further reference of 21st instant, respecting an anticipated attempt by citizens of the United States and others to possess themselves, under guise of settlement, of a large portion of the Indian Territory embracing the lands acquired by the treaties of 1866 with the various Indian nations or tribes in that Territory, and held for Indian purposes, according to the common understanding of the objects of said treaties.

Among these papers are communications from the Cherokee and Creek delegations, inclosing a printed copy of a letter from Augustus Albert, of Baltimore, Md., to E. C. Boudinot, a Cherokee Indian, now in this city, and of his reply thereto, dated 31st ultimo, stating in effect that these lands are a part of the public lands of the United States, and as such subject to settlement, excepting such portions as have been actually appropriated to the use of the Indian tribes located thereon.

Certain newspaper articles are also inclosed, conveying intimations of an organized movement during the coming month for the possession of these lands upon the theory that they are, in contemplation of law, free and open to settlement as public lands of the United States.

By the intercourse act of June 30, 1834, this tract of territory, with others, was declared Indian country, and for its government the basis was created of the present intercourse laws as embodied in the Revised Statutes, sections 2111 to 2157. Since that period, although the boundary of the Indian country has been varied under the operation of numerous laws, the whole Indian Territory has been regarded as Indian country, subject to no State or Territorial laws, and excepted from judicial process except under special enactments providing for a limited and restricted jurisdiction for the purposes of which it has been, by section 533, Revised Statutes, attached to the western district of Arkansas.

None of the land or general laws of the United States have been extended to any part of the Indian Territory, except as to crimes and punishments and other provisions regulated by the intercourse acts.

This being the condition of things, it is clear that no authorized settlement could be made by any person in the Territory except under the provisions of the intercourse laws, such person having first obtained the permission provided for in those statutes.

It may be further stated that no part of said Territory remains free from appropriation either to a direct trust assumed by treaty, or by reservation for tribes thereon under Executive order, except that portion still claimed by the State of Texas, and lying between Red River and the north fork of the same. [See the various treaties, agreements, and Executive orders from 1866 to the present time.]

By section 2147, Revised Statutes, authority is expressly granted to the officers of the Indian Department to remove from the Indian country all persons found therein contrary to law, and the President is authorized to direct the military force to be employed in such removal.

You are instructed to furnish a copy of this communication to the respective Cherokee and Creek delegations, and to direct the agents and officers of the Indian service to use their utmost vigilance in the removal of all such unauthorized persons as may attempt to appropriate by settlement any of the lands aforesaid, and make prompt report of any and all cases of such attempted trespass, for the information of this Department.

Very respectfully,

C. SCHURZ,
Secretary.

By the President of the United States of America: A proclamation.

Whereas it has become known to me that certain evil-disposed persons have, within the territory and jurisdiction of the United States, begun and set on foot preparations for an organized and forcible possession of, and settlement upon, the lands of

what is known as the Indian Territory, west of the State of Arkansas, which Territory is designated, recognized, and described by the treaties and laws of the United States and by the executive authorities as Indian country, and as such is only subject to occupation by Indian tribes, officers of the Indian department, military posts, and such persons as may be privileged to reside and trade therein under the intercourse laws of the United States;

And whereas those laws provide for the removal of all persons residing and trading therein without express permission of the Indian department and agents, and also of all persons whom such agents may deem to be improper persons to reside in the Indian country:

Now, therefore, for the purpose of properly protecting the interests of the Indian nations and tribes, as well as of the United States, in said Indian Territory, and of duly enforcing the laws governing the same, I, Rutherford B. Hayes, President of the United States, do admonish and warn all such persons so intending or preparing to remove upon said lands or into said Territory without permission of the proper agent of the Indian Department against any attempt to so remove or settle upon any of the lands of said Territory; and I do further warn and notify any and all such persons who may so offend that they will speedily and immediately be removed therefrom by the agent, according to the laws made and provided, and, if necessary, the aid and assistance of the military forces of the United States will be invoked to carry into proper execution the laws of the United States herein referred to.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this twenty-sixth day of April, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States one hundred and third.

RUTHERFORD B. HAYES.

By the President:
WILLIAM M. EVARTS,
Secretary of State.

[Senate Ex. Doc. No. 20, Forty-sixth Congress, first session.]

Message from the President of the United States, communicating, in answer to a Senate resolution of May 7, 1879, information in relation to an alleged occupation of a portion of the Indian Territory by white settlers.

MAY 16, 1879.—Read, ordered to lie on the table and be printed.

To the Senate of the United States:

In response to a resolution of the Senate of the 7th instant, requesting information in reference to an alleged occupation of a portion of the Indian Territory by white settlers, &c., I transmit herewith a copy of my proclamation, dated April 26, 1879, also copies of the correspondence and papers on file and of record in the Department of the Interior and the War Department, touching the subject of the resolution.

R. B. HAYES.

EXECUTIVE MANSION, *May* 15, 1879.

A proclamation by the President of the United States of America.

Whereas it has become known to me that certain evil-disposed persons have, within the territory and jurisdiction of the United States, begun and set on foot preparations for an organized and forcible possession of and settlement upon the lands of what is known as the Indian Territory, west of the State of Arkansas, which Territory is designated, recognized, and described by the treaties and laws of the United States, and by the executive authorities, as Indian country, and as such is only subject to occupation by Indian tribes, officers of the Indian Department, military posts, and such persons as may be privileged to reside and trade therein under the intercourse laws of the United States;

And whereas those laws provide for the removal of all persons residing and trading therein, without express permission of the Indian Department and agents, and also of all persons whom such agents may deem to be improper persons to reside in the Indian country:

Now, therefore, for the purpose of properly protecting the interests of the Indian nations and tribes, as well as of the United States, in said Indian Territory, and of duly enforcing the laws governing the same, I, Rutherford B. Hayes, President of the United States, do admonish and warn all such persons so intending or preparing to remove upon said lands

or into said Territory, without permission of the proper agent of the Indian Department, against any attempt to so remove or settle upon any of the lands of said Territory; and I do further warn and notify any and all such persons who may offend that they will be speedily and immediately removed therefrom by the agent according to the laws made and provided; and if necessary the aid and assistance of the military forces of the United States will be invoked to carry into proper execution the laws of the United States herein referred to.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twenty-sixth day of April, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

[L. S.] RUTHERFORD B. HAYES.

By the President:

WM. M. EVARTS,
Secretary of State.

DEPARTMENT OF THE INTERIOR,
Washington, May 13, 1879.

SIR: I have the honor to acknowledge the receipt, by executive reference, on the 8th instant, of a resolution of the Senate of the United States, adopted May 7, 1879, as follows, namely:

"*Resolved*, That the President be requested, if not incompatible with public interests, to communicate to the Senate what information he has in reference to an alleged occupation of a portion of the Indian Territory by white settlers, and what action has been taken to prevent the same."

In response to the reference, I have the honor to submit herewith copies of the correspondence and papers on file and of record in this Department and the Office of Indian Affairs touching the subject of the resolution; also a copy of the letter of the Commissioner of Indian Affairs, dated 10th instant, to whom the subject was referred, in whose communication the papers inclosed are noted.

The pursuant action, in the disposal of the military forces in compliance with the request of this Department and under the proclamation of the Executive, may be had from the records of the War Department.

I have the honor to be, sir, very respectfully, your obedient servant,

C. SCHURZ,
Secretary.

The PRESIDENT,
Executive Mansion.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 10, 1879.

SIR: I have the honor to acknowledge the receipt, by Department reference, for report thereon, of Senate resolution dated the 7th instant (herewith returned), requesting the President to communicate to the Senate what information he has in reference to an alleged occupation of a portion of the Indian Territory by white settlers, and what action has been taken to prevent the same.

In reply I have the honor to state that on the 19th ultimo the Cherokee and Creek delegates addressed a communication to this office, containing certain papers (copies of letters and inclosures herewith), and calling attention to the attempts of citizens of the United States to take possession of certain lands in the Indian Territory.

Inclosed in the aforesaid communication is a copy of a letter upon this subject, addressed to E. C. Boudinot, esq., of this city, by Augustus Albert, esq., of Baltimore, dated the 25th of March last, and of Mr. Boudinot's reply thereto, dated 31st of the same month.

The above-mentioned papers were forwarded to the Department with office report of the 19th ultimo (copy herewith), in which a statement is made of the various treaties and laws under which these lands were set apart for Indian purposes, and requesting that public notice be given informing all persons that the lands named are not subject to entry, and that stringent measures will be adopted to suppress any attempt to locate in the Indian Territory, and that the provisions of the intercourse laws will be enforced against any person other than an Indian found living there.

On April 21, 1879, the Cherokee and Creek delegates addressed another communica-

tion to this office (copy herewith), presenting further information upon the subject of this invasion, which communication was referred to the Department for consideration, in connection with office report of April 19.

On April 22, 1879, M. P. Roberts, esq., addressessed a communication to this office (copy herewith), upon this same subject, which was forwarded to the Department with office letter of April 25, for consideration, with office report of April 19.

By Department letter of the 25th ultimo (copy herewith), the honorable Secretary of the Interior decided that no authorized settlement could be made by any person in the Indian Territory except under the provisions of the intercourse laws, and instructed this office to direct the agents and officers of the Indian service to use their utmost vigilance in the removal of all such unauthorized persons as may attempt to appropriate by settlement any of the lands aforesaid.

On the 26th of April, the President issued a proclamation (copy herewith) admonishing and warning all persons intending or proposing to remove upon lands in the Indian Territory, without permission of the proper agent of the Indian Department, against any attempt to so remove or settle upon any of the lands of said Territory, and notifying any and all such persons who may so offend that they will speedily and immediately be removed therefrom by the agent, according to the laws made and provided, and, if necessary, the aid and assistance of the military forces will be invoked to carry into execution the laws of the United States.

On April 30, this office addressed communications to the several agents in the Indian Territory (copy herewith), inclosing a copy of Department decision of the 25th and of the President's proclamation of the 26th ultimo, instructing them to notify all persons attempting to reside in the Indian Territory contrary to law to remove therefrom, and authorizing them to use all the force at their command, police or otherwise, to effect the removal of all such intruders, and in case they are unable to remove such persons, to make report of any and all such cases to this office, in order that the proper authorities may direct the military forces of the United States to remove such intruders.

By letter of the 30th ultimo (copy herewith), the honorable Secretary of War informed the Department that there were troops at various points available for the purpose of removing these trespassers, and requested to be referred to the laws and statutes of the United States which declare the Indian Territory, under its present boundaries, to be "Indian country," so as to subject it to the intercourse laws and make it lawful to expel intruders therefrom by military force, if necessary, under section 2147 of the Revised Statutes.

By letter of the 1st instant (copy herewith), the honorable Secretary of the Interior replied to the above communication from the honorable Secretary of War, giving a full history of the various treaties and acts of Congress relative to the inquiry.

On the 7th instant this office addressed a communication to the Department (copy herewith) in relation to this subject, calling attention to various facts in connection therewith, and, with letter of the same day (copy herewith), the honorable Secretary of the Interior submitted the aforesaid communication to the President, with the request that military instructions may be issued under authority of the Executive as the Commander-in-Chief of the Army of the United States.

I inclose herewith a copy of a letter from United States Indian Inspector John McNeil, dated Coffeyville, Kans., the 4th inst., in relation to this subject, from which it appears that the emigration into the Indian Territory has not assumed such large proportions as indicated in the various newspapers throughout the country, and in which he states that by prompt and speedy action on the part of the military authorities a stop can be put thereto.

I inclose herewith copies of the following telegrams and letters, viz:

Letter from Agent Woodard, Sac and Fox Agency, dated 30th ultimo, and office telegram in answer thereto, dated the 9th instant.

Office telegram to Inspector Mc'Neil, dated 3d instant.

Telegram from Special Agent Haworth, dated 8th instant.

Numerous communications are being received daily from persons making inquiry in reference to this subject, in answer to which a copy of Department decision of the 25th and the President's proclamation are inclosed to the correspondents, with the information that the tenor of the same will be strictly enforced, if necessary, by the military authorities.

I inclose a copy of a map of the Indian Territory, which Mr. E. C. Boudinot, clerk of the House Committee on Private Land Claims, has had prepared for distribution, with printed copies thereon of the correspondence between himself and Augustus Albert, esq., of Baltimore.

I inclose copy of this report.

Very respectfully, your obedient servant,

E. A. HAYT,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

VINITA, *April* 19, 1879.

DEAR BILL: I am here just back from Fort Smith. I went there for the purpose of getting the service of a deputy marshal to assist me out West in my tax business. My reason for wanting one is this: The presence of a deputy will enforce without trouble the collection of the tax. I anticipated no trouble when I was at Washington, but now there is likelihood of some trouble on account of McFarland and others interfering and telling these people to resist and nothing will be done. There is a circular going the rounds here and signed by C. C. Carpenter, the object of which is to take forcible possession of the country west, beginning here and at Coffeyville, Kans. I send Missouri Republican with telegram from Vinita. It explains. Don't you think you had better bring the matter before Schurz? In the face of this proposed invasion I will hardly be able to do anything West. If you will get some sort of authority to act as marshal under the act of Congress 1834 (intercourse), that is, some person to act under my direction, all will be right. I believe if the matter was properly represented to the President he would feel bound to take cognizance of the matter. The fact is, the railroad crowd are going out there to get up a row, or rather Indian war. Their followers say it. They, with Carpenter, propose to do here what was done in the Black Hills. Colonel Bell heads the expedition from this place, and they are booked to start on the 21st instant.

Now don't neglect this. The United States marshal at Fort Smith would not allow one of his deputies to go in the West Arkansas country. He says the act of 1834 (intercourse law) is so old that he could not think of enforcing it now.

Write as soon as you can learn anything about the matter as to what the Department or President is likely to do. I will start my deputies next Monday. I will write other news in a day or two.

L. B. BELL.

WASHINGTON, D. C., *April* 21, 1879.

SIR: In addition to the papers we had the honor of submitting to you on last Saturday, praying for your interposition to prevent marauding aggressors under the auspices of certain railroad corporations and "land-grabbers" from taking forcible possession of certain Indian lands in the Indian Territory, we beg leave to submit the accompanying Saint Louis paper, with a letter from Hon. L. B. Bell, of Vinita, of Indian Territory, as further evidence of the danger threatening our country from the said offenders, &c.

Believing that you will readily appreciate the necessity of early action, we have the honor to be, very respectfully, your obedient servants,

G. W. STIDHAM,
PLEASANT PORTER,
Creek Delegation.
W. P. ADAIR,
D. H. ROSS,
Cherokee Delegation.

Hon. E. A. HAYT,
Commissioner of Indian Affairs.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 19, 1879.

SIR: I have the honor to present herewith a letter, with inclosures, from the delegates of the Cherokee and Creek Nations of Indians in the Indian Territory, calling attention to what appears to be an organized attempt by citizens of the United States to enter and take possession, in violation of law, of the major portion of the Indian Territory west of the lands now occupied by the five so-called civilized tribes.

The lands in question were ceded to the Cherokee, Creek, Seminole, Chickasaw, and Choctaw Nations of Indians prior to 1836, under solemn treaty obligations that they should be protected against the encroachments of the whites. The grants to them were in fee-simple, saving only that their lands were not to be conveyed except to the United States. By the treaties of 1866 with these tribes, they ceded the lands under consideration in trust to the Government for the purpose of settling other Indians thereon, the tribes to be reimbursed from the proceeds of the sales of the lands as fast as such settlements were made.

Under these provisions the Osages, Poncas, Pawnees, and Nez Percés have been settled within the Territory, but a large area remains undisposed of, in which the United States has only a trust interest, and over a large portion of which, by the treaty of 1866, the Indians still have jurisdiction.

While the language of the Cherokee treaty of July 19, 1866, varies somewhat in form from that of the treaties with the other tribes, the purpose to be accomplished is the same in all. A certain rate per acre was to be paid for the lands ceded by each nation as fast as they were sold. Payment in full has not been made in accordance with the treaties. The lands have not all been settled by other Indians, and hence the trust has not been discharged.

Judging from the communications herewith, and the numerous letters recently received in this office, stating that it is reported that the lands in the Indian Territory are open to settlement, and asking if such is the fact, it is my opinion that the unlawful scheme presented by Mr. Boudinot in the accompanying circular has obtained wide circulation. As serious complications are likely to arise if attempts are made to carry the same into effect, with a view to the maintenance of the faith of the Government, as witnessed by the various treaties with the tribes named herein, I have the honor to request that such public notice as you may consider necessary be given, informing all persons that the lands named are not subject to entry, and that stringent measures will be adopted to suppress any attempt to locate in the Indian Territory, and that the provisions of the intercourse laws will be enforced against any person, other than an Indian, found living there.

I respectfully request that the accompanying papers be returned to this office.

Very respectfully, your obedient servant,

E. A. HAYT,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 25, 1879.

SIR: Referring to office report of the 19th instant in relation to what appears to be an organized attempt by citizens of the United States to enter and take possession, in violation of law, certain lands in the Indian Territory, I have the honor to submit, for consideration with the same, a letter from M. P. Roberts, esq., dated the 22d instant, in relation to the same subject.

I respectfully request the return of the aforesaid communication to this office.

Very respectfully, your obedient servant,

E. J. BROOKS,
Acting Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

OFFICE OF THE INDIAN JOURNAL,
M. P. ROBERTS, PUBLISHER AND PROPRIETOR,
INDIAN TERRITORY, CREEK NATION,
Muskogee, April 22, 1879.

SIR: I am reliably informed, from a trustworthy source, that a colony of 1,200 persons are being formed at different points in Kansas, notably at Kansas City and Coffeyville, to invade the Indian Territory.

They are to meet at the latter place May 5, fully armed for all emergencies, thence to proceed to the unoccupied lands west of the Creek, Pottawatomie, and Chickasaw Reservation, for the purpose of taking possession of those lands, upon which they intend to settle colonies from the States other than Indian.

They claim to be acting under an opinion of the honorable Secretary Schurz, to the effect that there are from two to two and a half millions of acres there subject to preemption and settlement by the citizens of the United States other than friendly Indians and freedmen, and they go in to occupy and hold, the object and purpose being to gain a foot-hold and bring pressure to bear on the opening of the Territory.

They claim that the United States is powerless to keep them out or to force them out after they once locate there; to try the Black Hills way, expecting the same results.

You will please inform me if these parties are acting with the knowledge and approval of the Department of the Interior, and how far their statement as to land subject to preemption is true. Is there any lands within the Indian Territory subject to entry; and, if so, where and by what process?

This matter has been discussed by leading Cherokees, Creeks, Choctaws, and Chicka-

saws in a manner that would indicate serious complications and trouble in the event of the attempt to colonize United States citizens being carried out.

That you may know what weight to give my statement made above, I beg to refer you to the Creek or Cherokee delegates now in Washington.

Very respectfully, your obedient servant,

M. P. ROBERTS,
Editor Indian Journal.

Hon. A. S. HAYT,
Commissioner of Indian Affairs, Washington, D. C.

P. S.—I should be pleased to receive a copy of the report of the Patterson committee and such other documents from the Indian Bureau as may be of general interest, and also the latest map of the Indian Territory.

BALTIMORE, *March* 25, 1879,
No. 4, *North Howard St.*

DEAR SIR: In the Chicago Times of February 17, I noticed a communication of yours, in which you state there are several million acres of land in the Indian Territory which have been purchased by the General Government from the Indian tribes therein, and that they are now a part of the public lands of the United States.

This article has been extensively copied and commented upon by the press East and West, causing great and growing interest on the part of thousands for fuller information, to meet which, will you please give answer to the following questions:

1. As to exact amount purchased.
2. From what tribes bought.
3. Its situation in the Territory.
4. As to the Government's title; if free from restriction; if not, its nature; or was the land so bought purchased with the intention of its use in settling other tribes to be brought into the Territory upon it.
5. State the nearest point reached by rail to such lands, or if they are on or near the surveyed line of the Atlantic and Pacific Road, or how far from its present terminus.
6. Where can accurate maps of the Territory, showing location and boundaries of said purchased lands, be obtained?

An early answer, covering above questions and such other information as in your judgment would be of help and interest, is requested.

A USTUS ALBERT.

To Col. E. C. BOUDINOT.

WASHINGTON, D. C., *March* 31, 1879.

SIR: Your letter of the 25th inst., making inquiries concerning the lands belonging to the United States situated in the Indian Territory, is received.

1. In reply, I will say that the United States, by treaties made in 1866, purchased from Indian tribes in the Indian Territory about 14,000,000 acres of land.

2. These lands were bought from the Creeks, Seminoles, Choctaws, and Chickasaws. The Cherokees sold no lands by their treaty of 1866.

The Creeks, by their treaty of 1866, sold to the United States 3,250,560 acres, for the sum of $975,168. The Seminoles, by their treaty of 1866, sold to the United States 2,169,080 acres, for the sum of $325,362. The Choctaws and Chickasaws, by their treaty of 1866, sold to the United States the "leased lands" lying west of 96° of west longitude for the sum of $300,000. The number of acres in this tract is not specified in the treaty, but it contains about 7,000,000 acres. (See 4th vol. Statutes at Large, pages 756, 769, and 786.)

Of these ceded lands the United States has since appropriated for the use of the Sacs and Foxes 479,667 acres, and for the Pottawatomies 575,877 acres, making a total of 1,055,544 acres. These Indians occupy these lands by virtue of treaties and acts of Congress. By an unratified agreement the Wichita Indians are now occupying 743,610 acres of these ceded lands. I presume some action will be taken by the United States Government to permanently locate the Wichitas upon the lands they now occupy. The title, however, to these lands is still in the United States.

By executive order, Kiowa, Comanche, Arapahoe, and other wild Indians have been brought upon a portion of the ceded lands, but such lands are a part of the public domain of the United States, and have all been surveyed and sectionized.

A portion of these 14,000,000 acres of land, however, has not been appropriated by the United States for the use of other Indians, and in all probability never will be.

3. These unappropriated lands are situated immediately west of the 97° of west longitude and south of the Cherokee territory. They amount to several millions of acres,

and are as valuable as any in the Territory. The soil is well adapted for the production of corn, wheat, and other cereals. It is unsurpassed for grazing, and is well watered and timbered.

4. The United States have an absolute and unembarrassed title to every acre of these 14,000,000 acres, unless it be to the 1,054,544 acres now occupied by the Sac and Fox and Pottawatomie Indians. The Indian title has been extinguished.

The articles of the treaties with the Creeks and Seminoles, by which they sold their lands, begin with the statement that the lands are ceded "in compliance with the desire of the United States to locate other Indians and freedmen thereon."

By the express terms of these treaties, the lands bought by the United States were not intended for the exclusive use of "other Indians," as has been so often asserted. They were bought as much for the negroes of the country as for Indians.

The Commissioner of the General Land Office, General Williamson, in his annual report for 1878, computes the area of the Indian Territory at 44,154,240 acres, of which, he says, 17,150,250 acres are unsurveyed. The balance of the lands, amounting to 27,003,990 acres, he announces, have been surveyed, and these lands he designates as "public lands."

The honorable commissioner has fallen into a natural error. He has included in his computation the lands of the Cherokees west of 96° west longitude, and the Chickasaw Nation, which, though surveyed, can in no sense be deemed "public lands." The only public lands in the Territory are those marked on this map, and amount, as before stated, to about 14,000,000 acres.

Whatever may have been the desire or intention of the United States Government in 1866 to locate Indians and negroes upon these lands, it is certain that no such desire or intention exists in 1879. The negro since that date has become a citizen of the United States, and Congress has recently enacted laws which practically forbid the removal of any more Indians into the Territory. Two years ago Mr. Mills, of Texas, caused a provision to be inserted in the Indian appropriation bill prohibiting the removal of the Sioux Indians into the Indian Territory, a project at that time contemplated by the Interior Department; and by a similar provision in the Indian appropriation bill of last winter, the removal of any Indians from Arizona or New Mexico into the Indian Territory is forbidden.

These laws practically leave several millions of acres of the richest lands on the continent free from Indian title or occupancy and an integral part of the public domain.

5. The town of Wichita, in the State of Kansas, at the junction of the Big and Little Arkansas rivers, the present terminus of a branch of the Atchison, Topeka and Santa Fé Railroad, and the town of Eldorado, the terminus of another branch, are the nearest railroad points to these lands. From Wichita to these lands is about 90 miles due south. (See map.) There are several other railroad points on the northern line of the Territory more remote than Wichita or Eldorado. These points are Coffeyville, the terminus of the Leavenworth, Lawrence and Galveston Railroad; Chetopah, on the Missouri, Kansas and Texas Railroad, which is built through the Territory to Texas; and Baxter Springs, the southern terminus of the Missouri River, Fort Scott and Gulf Railroad. A glance at the map will show the location of these places. The Atlantic and Pacific, now called the Saint Louis and San Francisco Railroad, is finished to Vinita in the Cherokee Nation, where it crosses the Missouri, Kansas and Texas Railroad. The surveyed line of this railroad runs through these ceded lands.

6. To save the time which would be required to answer the many letters I am constantly receiving upon this subject, I have had made a plain but accurate map, which I inclose with this letter.

I shall be glad to furnish maps and such further information as may be requested.

Very respectfully, yours, &c.,

E. C. BOUDINOT.

Hon. AUGUSTUS ALBERT,
No. 4 North Howard St., Baltimore, Md.

COPY OF SLIP FROM SEDALIA DAILY DEMOCRAT.

The B. I. T.—Judge T. C. Sears, direct from Washington, interviewed. He says the Indian Territory will be opened up to white settlers at an early day. The Committee on Territories are in favor of prompt action. If Congress don't open it the people will. Fourteen million acres of public land open to settlement. A new bill in progress of preparation.

A Democrat reporter, hearing that Judge T. C. Sears, attorney-general of the M., K. & T., arrived by the evening train yesterday direct from Washington, gave him time to take a bath and change his linen before subjecting him to an interview upon the subject of his visit to Washington—the opening up of the Indian Territory to white settlement.

The judge was found snugly ensconced in his cosy parlor at Sicher's, and, it could be seen at a glance, was in a communicative mood. The reporter made known his mission—that of learning something with regard to the status of affairs relating to the Indian Territory—and agreed to do but little cross-questioning, which assurance was received with a self-satisfied smile, and without further preliminaries the interview was under full sail.

Judge SEARS. My principal business in Washington was to look after the organization of new committees, particularly the Committees on Indian Affairs and Territories both in the House and Senate. The Senate committees, as you are aware, are appointed by the Senate itself, and not by the presiding officer of the body. Both of the political parties appointed a subcommittee to arrange for the recommendation of persons from each of the representative parties upon the different standing committees. These recommendations were reported to the Senate and adopted, and the persons suggested were appointed.

REPORTER. The committees have been published, but there are many like myself who have forgotten who compose them.

JUDGE. The Committee on Territories of the Senate consists of Garland of Arkansas, Butler of South Carolina, Vest of Missouri, Slater of Oregon, Saunders of Nebraska, Kellogg of Louisiana, and Logan of Illinois.

REPORTER. What seems to be the sentiment of the committeemen upon the subject of opening up the Territory?

JUDGE. Every member of the committee are in favor of some immediate legislation looking to the opening of the Indian Territory for white settlement. The committee is an exceedingly able one, consisting, as will be seen, of some of the ablest men in the Senate. Garland, Kellogg, and Saunders were on the committee which reported the bill of last winter. These gentlemen are all considerably interested in the subject, and have already commenced an investigation of the matter.

REPORTER. How about the House committee?

JUDGE. The House committee, which was announced on Friday last, consists of Muldrow, of Mississippi, chairman; Cravens, of Arkansas; Bouck, Wisconsin; Muller, New York; Martin, West Virginia; Frost, Missouri; Bachman, Pennsylvania; Humphrey, Wisconsin; Aldrich, Illinois; Young, Ohio; Dick, Pennsylvania; and McGinnis, of Montana.

REPORTER. Are you aware of the sentiments of the House committee?

JUDGE. The positions of these gentlemen are not as fully known, owing to their recent appointment, as the Senate committee; but it is known that eight out of the eleven have expressed themselves decidedly in favor of such legislation as shall bring the Indian Territory out of its present anomalous condition into one of harmony with the other Territories of the United States. The question is continually growing of more interest and importance at Washington, and there is no doubt that Congress will take such action at no remote day as shall result in the opening of the Territory to settlement and development. Colonel Boudinot and myself received within the past few weeks scores of letters from all sections of the country making inquiries as to the status of the lands of the Indian Territory and the prospect of opening them for occupation. Investigation has developed the fact that there are over 14,000,000 acres of public lands that are embraced in no reservation and as free and unincumbered for occupation and settlement as lands in Kansas, Nebraska, or any other Territory.

REPORTER. In what locality do these lands lie?

JUDGE. These lands lie west of the five civilized tribes, so called, and their northern boundary is about ninety miles south of the Kansas line. These lands are among the richest in the world. Public attention is being called to them, and my opinion is that if Congress should fail to make suitable provision for the opening of the Territory to white settlement within a very short time the people will take the matter into their own hands and go down there and occupy and cultivate those lands.

REPORTER. Has any bill been introduced this session? If so, what is the purport of it?

JUDGE. No bill has yet been introduced at this session. I have one nearly prepared, but owing to the anomalous position of the five tribes and the desire to make a provision for them that would be suitable and equitable, considerable elaboration and detail are necessary in addition to the ordinary legislation providing for the organization of the Territories. No attempt will be made to precipitate matters, but to give the whole subject candid and thorough discussion.

REPORTER. What are the probabilities of anything being done at this session?

JUDGE. If Congress shall proceed to general legislation at this extra session, the bill will be introduced, referred to the committee, and probably reported on by one or both of them.

This being about all of interest that the judge cared to tell of the subject-matter, the reporter bade him good evening.

COPY OF DISPATCH IN MISSOURI REPUBLICAN.

Indian Territory. An expected influx of many thousands of white settlers. Bitter local feeling on the subject of immigration.

[Special to the Republican.]

VINITA, IND. T., April 11.

The Cherokees are jubilant over the news that 15,000 or 25,000 people will emigrate to this country soon.

A colony is now being organized at Kansas City under the superintendence of Col. C. C. Carpenter, of Black Hills notoriety, and will rendezvous, organize, and draft by-laws at Coffeyville on May 5. A similar organization will take place at this point. Captain Seayrs, of this place, started out this morning to lay out a trail to the promised land west of the 96th parallel. The lands, we are informed by Captain Seayrs, far excel those of any other portion of the Territory. Poor Lo will no doubt have to submit to the inevitable. This will close the only outlet and afford great protection to settlers along the borders of Kansas and New Mexico. To show that the kindest of feelings do not exist between the two political factions here, it is only necessary to copy a few extracts published by some knight of the assassin's knife. The following was found posted up against the storehouse of J. M. Duncan a few nights since, and is a mild specimen of epithets hurled at the adversary of the non-progressionists, and evidently shows that they have been checkmated on some very important point:

"From reliable information it is reported that a certain clique of disappointed and disaffected political aspirants, who are too indolent to make an honest living, failing to extend any further their credits with merchants, failing to have their country territorialized, and failing to get authority from the Interior Department to collect taxes for the Cherokee Nation for cattle-grazing on the public domain, have at last concocted a scheme for robbing their nation and enriching themselves.

"Aaron Burr in his palmiest days schemed not like one of these. They, with the colored citizens of the United States, have petitioned Congress to set aside a portion of the Indian Territory for the exclusive settlement of negroes. The movement is headed by men of some notoriety, a once eminent politician, a distinguished educator, a skillful physician, and a talented editor of a large and influential newspaper, now defunct, assisted by half a score of lesser lights. If the movement proves a success, we look for great and wonderful changes. The problem of Indian civilization, a vexed question the United States has been trying to solve for the last half century, will be readily solved by them.

"The Indians will become civilized as if by magic under the benignant influence of their more civilized African brethren, under the leadership of so much ability and patriotism. The Cherokee Nation will be benefited in several ways by this exodus. Questions of citizenship will no longer vex our courts. Lying specials to Saint Louis and Washington will be a thing of the past. Incendiarism and threats of assassination will be no more. All good citizens bid the movement Godspeed."

WASHINGTON, D. C.,
April 19, 1879.

Hon. E. A. HAYT,
Commissioner of Indian Affairs:

SIR: We have the honor herewith of transmitting a circular signed by one E. C. Boudinot, a private citizen of the Cherokee Nation, and two newspapers, one containing an interview of Mr. Sears, of the Missouri, Kansas & Topeka Railroad Company, and the other having a dispatch from Vinita, Ind. T.; also a letter from a reliable citizen of Vinita, Ind. T., Dr. J. T. Cunningham, all of which show that there is an attempt being made in the interest of railroad corporations and squatters to take forcible possession of certain Indian lands in the Indian Territory, set apart by treaty stipulations for the homes only of Indians, and certain freedmen that formerly belonged to the Indians of the Indian Territory. We respectfully but firmly protest against this unlawful procedure, and insist that you at once take the necessary steps to prevent it, and to have our treaty stipulations with the Government carried out in good faith.

We would much regret any difficulty between our people and citizens of the United States; but if the schemes of the railroad parties are permitted to be carried out and our

country is flooded with the tide of emigration that those railroad corporations are seeking to *force* upon us, it will be perhaps beyond the power of the Government to prevent a serious collision.

We have the honor to be, very respectfully, your obedient servants,

W. P. ADAIR,
DAN'L H. ROSS,
Cherokee Delegation.
G. W. STIDHAM,
PLEASANT PORTER,
Creek Delegation.

UNAUTHORIZED SETTLEMENT IN THE INDIAN TERRITORY.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 25, 1879.

The Commissioner of Indian Affairs:

SIR: I am in receipt of the papers accompanying your letter of the 19th instant, and further reference of 21st instant, respecting an anticipated attempt by citizens of the United States and others to possess themselves, under guise of settlement, of a large portion of the Indian Territory, embracing the lands acquired by the treaties of 1866 with the various Indian nations or tribes in that Territory, and held for Indian purposes, according to the common understanding of the objects of said treaties.

Among these papers are communications from the Cherokee and Creek delegations, inclosing a printed copy of a letter from Augustus Albert, of Baltimore, Md., to E. C. Boudinot, a Cherokee Indian, now in this city, and of his reply thereto, dated 31st ultimo, stating in effect that these lands are a part of the public lands of the United States, and as such subject to settlement, excepting such portions as have been actually appropriated to the use of the Indian tribes located thereon.

Certain newspaper articles are also inclosed, conveying intimations of an organized movement during the coming month for the possession of these lands upon the theory that they are, in contemplation of law, free and open to settlement as public lands of the United States.

By the intercourse act of June 30, 1834, this tract of territory, with others, was declared Indian country, and for its government the basis was created of the present intercourse laws as embodied in the Revised Statutes, sections 2111 to 2157. Since that period, although the boundary of the Indian country has been varied under the operation of numerous laws, the whole Indian Territory has been regarded as Indian country, subject to no State or Territorial laws, and excepted from judicial process except under special enactments providing for a limited and restricted jurisdiction, for the purposes of which it has been, by section 533, Revised Statutes, attached to the western district of Arkansas.

None of the land or general laws of the United States have been extended to any part of the Indian Territory, except as to crimes and punishments and other provisions regulated by the intercourse acts.

This being the condition of things, it is clear that no authorized settlement could be made by any person in the Territory except under the provisions of the intercourse laws, such person having first obtained the permission provided for in those statutes.

It may be further stated that no part of said Territory remains free from appropriation either to a direct trust assumed by treaty, or by reservation for tribes thereon under Executive order, except that portion still claimed by the State of Texas, and lying between Red River and the north fork of the same. [See the various treaties, agreements, and Executive orders from 1866 to the present time.]

By section 2147, Revised Statutes, authority is expressly granted to the officers of the Indian Department to remove from the Indian country all persons found therein contrary to law, and the President is authorized to direct the military force to be employed in such removal.

You are instructed to furnish a copy of this communication to the respective Cherokee and Creek delegations, and to direct the agents and officers of the Indian service to use their utmost vigilance in the removal of all such unauthorized persons as may attempt to appropriate by settlement any of the lands aforesaid, and make prompt report of any and all cases of such attempted trespass, for the information of this Department.

Very respectfully,

C. SCHURZ, *Secretary.*

A proclamation by the President of the United States of America.

Whereas it has become known to me that certain evil-disposed persons have, within the territory and jurisdiction of the United States, begun and set on foot preparations for an organized and forcible possession of, and settlement upon, the lands of what is known as the Indian Territory, west of the State of Arkansas, which Territory is designated, recognized, and described by the treaties and laws of the United States and by the Executive authorities as Indian country, and as such is only subject to occupation by Indian tribes, officers of the Indian Department, military posts, and such persons as may be privileged to reside and trade therein under the intercourse laws of the United States;

And whereas those laws provide for the removal of all persons residing and trading therein without express permission of the Indian Department and agents, and also of all persons whom such agents may deem to be improper persons to reside in the Indian country:

Now, therefore, for the purpose of properly protecting the interests of the Indian nations and tribes, as well as of the United States, in said Indian Territory, and of duly enforcing the laws governing the same, I, Rutherford B. Hayes, President of the United States, do admonish and warn all such persons so intending or preparing to remove upon said lands or into said Territory without permission of the proper agent of the Indian Department against any attempt to so remove or settle upon any of the lands of said Territory; and I do further warn and notify any and all such persons who may so offend that they will speedily and immediately be removed therefrom by the agent, according to the laws made and provided, and, if necessary, the aid and assistance of the military forces of the United States will be invoked to carry into proper execution the laws of the United States herein referred to.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this twenty-sixth day of April, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States one hundred and third.

RUTHERFORD B. HAYES.

By the President:
WILLIAM M. EVARTS,
Secretary of State.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 30, 1879.

———— ————, Esq.,
U. S. Indian Agent, ———— ———— *Agency, Indian Territory:*

SIR: Information having reached this office respecting an anticipated attempt by citizens of the United States and others to possess themselves, under guise of settlement, of a large portion of the Indian Territory, embracing the lands acquired by the treaties of 1866, with the various Indian nations or tribes in that Territory, the subject was reported to the Department by this office on the 19th instant.

By decision of the honorable Secretary of the Interior, under date of the 25th instant (copy herewith), all such persons are declared to be intruders, and this office is directed to instruct the agents and officers of the Indian service to use their utmost vigilance in the removal of all such unauthorized persons as may attempt to appropriate by settlement any of the aforesaid lands.

I also inclose, herewith, a copy of a proclamation issued on the 26th instant by the President, warning all persons intending or preparing to remove upon said lands or into the Indian Territory without the permission of the proper agent of the Indian Department against any attempt to so remove or settle upon any of the lands of said Territory, and that all such persons who may so offend will be speedily and immediately removed therefrom by the agent, and, if necessary, the assistance of the military forces of the United States will be invoked to effect such removal.

You are therefore instructed to notify all persons attempting to reside in the Indian Territory contrary to law to remove therefrom, and you are authorized to use all the force at your command, police or otherwise, to effect the removal of all such intruders, and in case you are unable to remove such persons, you will make prompt report of any and all cases, giving names, &c., for the information of this office, in order that the proper authorities may direct the military forces of the United States to remove such intruders.

Very respectfully,
(Signed)

E. A. HAYT,
Commissioner.

MAXWELL.

WAR DEPARTMENT,
Washington City, April 30, 1879.

SIR: In compliance with your request, I have the honor to inform you that there are troops available, which can be used to support the authorities of your Department in removing trespassers from the Indian Territory, and in carrying out the orders of the President contained in his recent proclamation.

At Fort Sill there are 124 men of the Fourth and 109 men of the Tenth Cavalry, and 63 men of the Sixteenth Infantry. At Fort Reno there are 134 men of the Fourth Cavalry and 34 men of the Sixteenth Infantry. At Fort Supply there are 59 men of the Fourth Cavalry. At Fort Elliott there are 55 men of the Fourth Cavalry, 54 men of the Tenth Cavalry, and 91 men of the Nineteenth Infantry.

At Fort Gibson there are 41 men of the Sixteenth Infantry. There are also troops at Forts Riley, Wallace, and Hays. Orders will at once be issued to the commander of that department, General Pope, to respond to any call made upon him for assistance in pursuance of any statute authorizing the use of the troops. You are aware that under the act of June 18, 1878, no part of the Army can be used as a *posse comitatus* or otherwise for the purpose of executing the laws except in such cases as are expressly provided for by the Constitution or by act of Congress. I will thank you to point out the provisions of the statute under which you think the troops may be used in this instance. My attention has been called to sections 2147, 2149, and 2150.

The first authorizes the use of the military to remove from the Indian country all persons found therein contrary to law, and would doubtless cover the case, assuming that there is a law which forbids settlement in the Indian Territory. I will also thank you to indicate the points at which you think troops should be stationed in order to be at hand when needed for the purpose indicated.

I have the honor to be, very respectfully, &c.,

GEO. W. McCRARY,
Secretary of War.

The Hon. the SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 1, 1879.

The Hon. the SECRETARY OF WAR:

SIR: I am in receipt of your request of the 30th ultimo, for a reference to the laws and statutes of the United States which declare the Indian Territory under its present boundaries to be "Indian country," so as to subject it to the intercourse laws, and make it lawful to expel intruders therefrom by military force if necessary, under section 2147 of the Revised Statutes.

The whole of this Territory was included in the statute of March 30, 1802, declaring what portion of the United States shall be deemed "Indian country," which was re-enacted in terms by the first section of the act of June 30, 1834. (Stats., 4, p. 729.)

The intervening act of May 28, 1830, authorized the President of the United States to cause so much of any territory west of the Mississippi, not included in any State or organized Territory, as he might judge to be necessary, to be set off and divided into districts for the reception of Indian tribes. This Territory was specially selected and reserved by the Executive for the purposes prescribed, and has ever since been known and recognized as the "Indian country," no States nor organized Territories having been created therein. In the mean time, by treaty of May 6, 1828, article 2 (Stats., 7, p. 311), which was reaffirmed by treaty of December 28, 1835, (Stats., 7, p. 479), the United States ceded to the Cherokee Nation what is now known as the Cherokee country in said Territory, and the jurisdiction of which is still retained by said nation under treaty of July 19, 1866 (Stats., 14, p. 799, art. 16), although a large portion of said lands are located by other Indians under the provisions of the latter treaty.

The next cession, in order of time, was made to the Creek Nation by treaty of February 14, 1833 (Stats., 7, p. 417, art. 2). This tract was situated immediately south of the Cherokee lands, extending westward to the Mexican boundary.

Next came the Choctaw and Chickasaw cession of June 22, 1855 (Stats., 11, p. 611), by which the residue of what is now the Indian Territory was ceded to those tribes.

By article 4 of the Creek treaty of February 14, 1833, above cited, provision was made for the Seminoles, and by treaty with the latter of March 2, 1833 (Stats., 7, p. 423), they were settled upon that portion of the Creek lands lying between the north and south forks of the Canadian River.

By these treaties title was guaranteed to the several tribes, and it was provided that the lands should never be included within the territorial limits or jurisdiction of any State or Territory, but should remain subject to the intercourse laws, which laws have, as before stated, continued in force in all parts of the Territory to the present time.

The title acquired by the Government by the treaties of 1866 was secured in pursuance and furtherance of the same purpose of Indian settlement which was the foundation of the original scheme.

That purpose was the removal of Indian tribes from the limits of the political State and Territorial organizations, and their permanent location upon other lands sufficient for the needs of each tribe. These lands being ample in area for the purpose, it has become a settled policy to locate other tribes thereon as fast as arrangements can be made, and provisions have been constantly made by treaties, agreements, and acts of Congress to effect these objects.

That purpose is expressly declared in the said treaties. The cessions of the Creeks and Seminoles are stated to have been made "in compliance with the desire of the United States to locate other Indians and freedmen thereon." These words must be held to create a trust equivalent to what would have been imposed had the language been "for the purpose of locating Indians and freedmen thereon."

The lands ceded by the Choctaws and Chickasaws were by article 9 of the treaty of June 22, 1855, "leased to the United States" * * * "for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate therein."

The treaty of 1866 substituted a direct purchase for the lease, but did not extinguish or alter the trust. In 1867 the Kiowas, Comanches, and Apaches were settled upon these lands by treaty. In 1869 the Cheyennes and Arapahoes were located by executive order, the Wichitas being already upon a portion of the same prior to the purchase.

The executive order of August 10, 1869, for the Cheyennes and Arapahoes also covers all that portion of the Creek and Seminole lands west of the 98th meridian and south of the Cimarron River.

It will thus be seen that the Indian country, as defined by statute, embraces the whole Indian Territory. No part of it has been brought under the operation of general laws, or made subject to settlement as public lands. It is attached as "Indian country," for the enforcement of the intercourse laws alone, to the western district of Arkansas, by section 533 of the Revised Statutes. It is expressly named as Indian country in the act of March 3, 1875, "to establish the boundary between the State of Kansas and the Indian country," which recognizes the proper closing of the surveys of the public lands upon its boundaries, as originally marked.

The consolidated provisions of the intercourse laws embrace two entire chapters of the Revised Statutes, sections 2111 to 2157, inclusive.

The fact that they have not in terms re-enacted the boundaries of the Indian country should not, in my judgment, be held to destroy its previously recognized location, as the direct effect of such conclusions would render inoperative the entire legislation provided for its government. Its recognition by the revised compilation and by subsequent statutes has heretofore been noted.

The persons now attempting settlement therein allege the acquisition of these lands in 1866 as the date when they became subject to the general laws of the United States. Thirteen years have now elapsed, and Congress has made no attempt to provide for them the necessary machinery for the execution of the general laws; but on the contrary, by recent enactment, has expressly provided for the continued jurisdiction of the district court of Western Arkansas. This must be held to negative any assumption that they are released from the special Indian purposes for which they were acquired and to which they have been continuously devoted.

For the views of the judiciary department, see opinion of August 12, 1873 (14th Opinion, 290), where the whole subject is elaborately considered, and which is in entire accord with the foregoing conclusions, so far as it relates to the region of the country in question.

Respecting the location of troops for the purposes indicated, I have the honor to state that the information in hand indicates a general movement from Coffeyville, Kans., via Old Whiskey Trail and Bruner's Crossing of the Arkansas River, to the Sac and Fox Agency; thence to the Cimarron River, so as to reach the lands to the southward of the stream west of the 96th meridian. Also one from Arkansas City and one from Wichita to reach the same lands. Troops should be so placed near the north line of the Indian Territory as to cover each of these routes, and also at such points near the Sac and Fox Agency as to turn back and remove any parties who may have already entered the Territory.

It is desired that such of the intruders as are inclined to retire peacefully and willingly from the Indian Territory should be conducted to the boundary of the Territory and al-

lowed to proceed thence without restraint; and that the leaders in the movement, Mr. Carpenter in particular, and such persons as indicate a spirit of resistance, should be arrested and turned over to the civil authorities of the United States at Fort Smith, Ark., for trial.

Very respectfully,

C. SCHURZ,
Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, May 7, 1879.

SIR: I have the honor to submit herewith a letter of this date addressed to the Department by the Commissioner of Indian Affairs, calling attention to the statement of facts presented therein in relation to the organized movement of large bodies of unauthorized people into the Indian Territory, which has been the subject of previous correspondence from this Department.

In view of the statements contained in the letter of the Commissioner and the evident necessity for immediate and efficient action, I respectfully request that the military instructions may be issued under authority of the Executive as the Commander-in-Chief of the Army of the United States.

I have the honor to be, sir, very respectfully, your obedient servant,

C. SCHURZ,
Secretary.

The PRESIDENT,
Executive Mansion.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 7, 1879.

SIR: In connection with the movement in progress to take possession of the Indian Territory, I desire to call your attention to the following facts:

It appears from communications received at this office that parties are entering said Territory on most of the roads leading thereto from the States of Kansas and Missouri. Large numbers are reported by the agent to have entered and settled upon the Quapaw lands, in the northeastern corner of the Territory, within the last few days. It is evident from the fact that these parties are settling upon the Quapaw Reservation, near the north line of the Territory, that it is not, as at first indicated, their intention to settle alone on the lands designated in the Boudinot circular as public lands, but to take possession of the whole Territory.

There are on or near the north line of the Territory but two Indian agencies, the Quapaw and the Osage. It is obvious that the supervision of these agents can extend but a short distance in any direction from their respective agencies. It will therefore appear that it is impossible for them to supervise so great an extent of territory if their jurisdiction extended to the same. Therefore the order issued by the military authorities, as indicated by the telegram herewith from General McNeil, that the military are to act in the removal or prevention of intruders only upon the written application of Indian agents, after notification to the intruders, is impossible of execution.

I beg leave to suggest that the attention of the President be called to this matter, with the recommendation that the commanding officer of the district be directed to station troops upon the various roads entering the Indian Territory, a short distance within the boundary of the same, with instructions to arrest and return to the States all parties who appear to be unlawfully entering the Territory for the purpose of settlement. Troops should also be stationed near the Sac and Fox agency, with similar instructions. Adequate forces should also be sent in pursuit of any parties who are known to have passed into the Territory since this movement began, with instructions to conduct those who will return willingly from the Territory, and to arrest such as make a show of resistance, and to turn them over to the civil authorities at Fort Smith, Ark., for trial.

In my judgment the situation is such as to call for the most energetic action. The movement is in direct contravention of law, and the power of the Government should be exercised for its immediate suppression.

Very respectfully, your obedient servant,

E. A. HAYT,
Commissioner.

The Hon. The SECRETARY OF THE INTERIOR.

UNITED STATES INDIAN SERVICE,
Coffeyville, Kans., May 4, 1879.

SIR: I have the honor to report that I arrived here last night. I have diligently applied myself to-day in inquiry as to the nature and extent of the so-called emigration into the Indian Territory.

Although it has been diligently and systematically worked up by newspapers like the Kansas City Times, in the interest, and we may fairly suppose in the pay, of the railroads, not much has yet been done to move emigrants. The fact that a fellow like C. C. Carpenter is allowed to put himself at the head of the enterprise must operate against it in Missouri and Kansas where he is known. I have seen some of the most reliable people of this town, and cannot find that any considerable party has yet left it, or gone through it. On the way there, twenty wagons and two ambulances were telegraphed to have gone out from here; only one stage-load left, and that was chartered and filled by a surveying party.

At this season of the year on the frontier will be found hundreds of "movers," people who go anywhere to get from where they last lived.

Some of these have, I suppose, been induced by the specious promises of Carpenter *et al.* to join them, and they may succeed in getting crowds of the restless and discontented on the same terms, if force is not at once applied to prevent their folly.

Troops could be bivouacked at points on the northern line of the Territory that would effectually prevent the intended invasion; say south of Baxter Springs, Chetopah, Coffeyville, and Arkansas City.

I believe the War Department intends to establish posts near the Caney, north of Osage Agency, and at a point south of Caldwell. If this disposition of troops could be made at once, I am satisfied that this invasion project would fall through, so that the troops could be withdrawn before the fall months.

Carpenter is here. He was the first man I met on my arrival. He is the same bragging, lying nuisance that I knew him seventeen years ago, when he infested Fremont's quarters. He will not put his head in danger by entering the Territory. It is a pity that the law could not hold him as a conspirator against the public peace. I gave him a few words of caution about getting honest men in trouble; but a pair of handcuffs would be the only convincing argument with him. He came to Independence, some twenty miles from here, at the end of a little spur of the same railroad. The merchants agreed to give him five hundred dollars when his first party came, and a thousand dollars more when a thousand emigrants had been moved to the Territory by him. He could not satisfy the parties that he had a party at all; they refused the first installment, and he left that place for this, saying that the Independence people had gone back on him. His wife is now operating on the merchants of this place in raising funds. The appearance of a squadron of United States cavalry would at once dry up this source of revenue.

The competition between the border towns for this emigration is the fruitful source of the lies that have been told about its magnitude, and the inducements held out to entice people into it.

A party propose leaving Chetopah to-morrow. Their leader, a Mr. McFarland, who called on me, reported them as 75 families. I think he exaggerated the number, but I telegraphed General Pope, who can catch and return them. Carpenter says that twenty-five hundred have gone in below Sac and Fox country. I suppose one-tenth of this number are there, as that is as near as he could possibly come to the truth; and it is quite as many as I can account for, even though four-fifths of them went by other routes than this.

If these people are summarily ejected and set across the line, a stop will be put to the whole thing. Force is the argument in this case, and the success of the Government will depend on the promptness and speed of its application. Powerful and unscrupulous influences are at work stirring up the West in this matter. Only the whole power of the Government can defeat them. Humanity demands that this be quickly applied. I shall keep General Pope advised by letter or telegraph, and report each event as it occurs to you. I may require some means for the getting of secret reports and authority to use them. In case I do, I'll telegraph request for same.

I have the honor to be, your obedient servant,

JOHN McNEIL,
Inspector.

Hon. E. A. HAYT,
Commissioner of Indian Affairs, Washington, D. C.

OFFICE OF UNITED STATES INDIAN AGENT,
Sac and Fox Agency, Indian Territory, April 30, 1879.

Hon. E. A. HAYT,
Commissioner Indian Affairs, Washington, D. C.:

I have been hearing, for some time, rumor of arrangements for settling the Government lands in the Indian Territory, but have had nothing definite in regard to the matter until the 28th, when four or five wagon-loads of men, women, and children passed through this place destined to form a settlement on the head of Deep Fork, about forty-five or fifty miles west of Mexican Kickapoo station, this agency; since which time, about twenty wagons have passed, generally men. In view of the fact that this subject is assuming formidable and apparently large proportions, I deem it necessary to notify you of the facts, so that such action may be taken as the merits of the case demand.

The present point for settlement of those who have passed through here is some nearer Cheyenne Agency than this place; but if the number that is now reported, and who have arranged and are arranging to come, do come, in less than one month they will be scattered over hundreds of miles, selecting the best portions for farms.

I wish to call your attention particularly to the land occupied by the Mexican Kickapoo Indians, as I have no knowledge that their reservation has been bounded, further than that they were to occupy lands immediately west of and adjoining the Sac and Fox Reservations. If they have not a reserve set apart to them by metes and bounds, it will be absolutely necessary for this to be done at once, or their lands will be occupied by these immigrants, and a removal after they have once settled will be much more difficult than to prevent their occupancy, if the reservation is so bounded as to show where the Kickapoos actually have a right.

It has been the understanding with them that they should have land bounded on the east by the Sac and Fox Reserve, north by the Deep Fork River, west by the Indian meridian, and south by the North Fork River. This constitutes a tract of about eight townships. Some have claimed that it extends north to Red Fork or Cimarron River.

I herewith inclose three slips taken from the latest papers received here, which shows more fully the status of this immigration movement. You may have been apprised of this through the press, but the matter of the Kickapoo Reservation should claim immediate attention.

Very respectfully,

LEVI WOODARD, *Agent.*

[Telegram.]

OFFICE OF INDIAN AFFAIRS,
Washington, D. C., May 3, 1879.

To GEN. JOHN MCNEIL,
Coffeyville, Kans.:

The Secretary directs me to say that the utmost vigilance and energy must be exercised to prevent the movement into the Indian Territory. The military have been instructed to use the necessary force to return all parties now in the Territory therefrom, and to prevent any further movements across the line. Any important facts coming to you should be communicated to General Pope and to this office.

E. J. BROOKS,
Acting Commissioner.

[Telegram.]

QUAPAW AGENCY, I. T., VIA SENECA, MO.,
May 6, 1879.

To COMMISSIONER INDIAN AFFAIRS, *Washington, D. C.:*

Large numbers of people have moved into the Quapaw land in the last few days. Will warn them off at once.

HAWORTH.

[Telegram.]

OFFICE OF INDIAN AFFAIRS,
Washington, D. C., May 9, 1879.

To WOODARD, *Agent, Sac and Fox Agency,*
via Muskogee, Indian Territory:

Use your police employés and any other force you can command to prevent any further movement through your agency to territory west. Notify all parties to turn back under pain of removal by the military, who have been ordered to your agency for that purpose.

E. J. BROOKS,
Acting Commissioner.

[Telegram.]

SENECA, MO., *May 8, 1879.*

To COMMISSIONER INDIAN AFFAIRS,
Washington, D. C.:

Most all the Quapaw lands are staked off in claims, but claimants gone from Territory; one man on Kansas border moved his house on to what appears to be the Territory; he claims that it is on a strip of land claimed by Kansas. I notified him to remove it at once from the lands of the Territory. Is there a strip of land in borders of Territory in dispute with Kansas? All the claims are marked with names of claimants, in many cases on blazed trees and stakes in ground. I believe ten police can control it as it at present stands.

HAWORTH, *Agent.*

[Telegram.]

OFFICE OF INDIAN AFFAIRS,
Washington, D. C., May 6, 1879.

To General MCNEIL,
Coffeyville, Kans.:

It is not necessary that agents should call on intruders to leave and then notify troops of refusal. Orders have been issued from here for their movement. It is not our duty to supply transportation for the Army, and have no funds for that purpose. Give all the vigor possible to movement.

E. J. BROOKS,
Acting Commissioner.

REPORT FROM THE WAR DEPARTMENT.

WAR DEPARTMENT,
Washington City, May 14, 1879.

SIR: I have the honor to return, with the papers which accompanied it, under your reference of this date, Senate resolution of May 7, 1879, calling for information in regard to an alleged occupation of a portion of the Indian Territory by white settlers, and the action taken to prevent same, and to transmit copy of correspondence on the subject as far as of record in this Department.

Very respectfully, your obedient servant,

GEO. W. MCCRARY,
Secretary of War.

The PRESIDENT.

[Telegram.]

HEADQUARTERS OF THE ARMY,
Washington, D. C., May 1, 1879.

To General P. H. SHERIDAN,
Commanding Division, Chicago, Ill.:

Referring to the President's proclamation of April 26, 1879, this day mailed you, forbidding trespass by immigrants on the Indian Territory, you may instruct the commanding general, Department of the Missouri, to use all his available troops to execute

the terms of that proclamation, using force only on the requisition of and, when practicable, under the personal supervision of the officers of the Indian Bureau or of the several agents for the Indian tribes whose reservations lay within the Indian Territory, pursuant to sections 2147, 2149, and 2150 of the Revised Statutes.

W. T. SHERMAN,
General.

WAR DEPARTMENT,
Washington City, May 2, 1879.

To the GENERAL OF THE ARMY:

The President directs that you issue such further orders as may seem proper to enable the military authorities in the vicinity of the Indian Territory to aid the authorities of the Interior Department in carrying out his recent proclamation and in removing intruders from the Indian country. The whole of the Indian Territory will be regarded and treated as "Indian country" within the meaning of section 2147 of the Revised Statutes.

I am advised by the Secretary of the Interior that immigrants are moving into the Territory by way of Coffeyville, Kans., and of the trail known as the Old Whisky trail to the Sac and Fox Agency; also by way of Arkansas City and Wichita, Kans.; also by the Missouri, Kansas and Texas Railroad. It is desirable to station troops so as to intercept and turn back persons entering the Territory by either of these routes.

The President also expresses the opinion that the execution of your orders upon this subject should be intrusted to some well-known officer of considerable rank, who should go upon the ground and direct operations, believing as he does that the presence of such an officer would alone be of great importance and render unnecessary the use of force.

GEO. W. McCRARY,
Secretary of War.

[Telegram.]

HEADQUARTERS ARMY OF THE UNITED STATES,
Washington, D. C., May 2, 1879.

General P. H. SHERIDAN,
Commanding Military Division, Chicago, Ill.:

Orders and instructions will be mailed you to-night to use force and persuasion to prevent intrusion by emigrants on the Indian Territory south of Kansas.

Order at once small detachments to Coffeyville, Wichita, and Arkansas City, with some active, good officer, such as Charles H. Smith or Dodge, to command the whole, and instruct all commanding officers in the Indian Territory to use force on the requisition of the Indian agents to expel parties who attempt to make settlements south of the Kansas line.

W. T. SHERMAN,
General.

HEADQUARTERS ARMY OF THE UNITED STATES,
Washington, D. C., May 2, 1879.

General P. H. SHERIDAN,
Commanding Military Division, Chicago, Ill.:

GENERAL: I have this moment, 4.15 p. m., received from the Hon. Secretary of War a letter of this date, copy of which is herewith inclosed, which I construe to be the result of a conference in Cabinet to-day. I prefer to send it entire by mail rather than by telegraph, because of the nature of the subject, and because I understand the President attaches much importance to it. The movement to settle on the Indian Territory must be resisted by all the power of the Government, civil and military, because the faith of the nation is pledged that this Territory shall be reserved to the Indians removed to that country in 1838, and to the others located there by subsequent treaties, all of which are construed as obligatory in law as well as honor.

The absence of Generals Pope and Davis at this instant of time may make it awkward for you to fulfill the orders of the War Department, but I advise you to order to the points indicated by the Hon. Secretary of War small detachments of troops to encamp near the southern border of Kansas, to notify all emigrants who pass south into the Indian Territory that they are acting in violation of law, and that they will most undoubtedly be ejected by force if they persist. Some judicious officer, say Col. C. H. Smith, Nineteenth Infantry, or Lieut. Col. R. I. Dodge, of the Twenty-third, with two

or three young officers, mounted, should be posted, say at Coffeyville, with orders to patrol the frontier, to caution all emigrants that any attempt to enter and make a settlement south of Kansas will result in a violent expulsion.

Then instruct the commanding officers at Forts Gibson, Sill, Reno, Supply, Elliott, and the cantonment recently established on the Canadian, that, on the written request of any Indian agent, they will send a detachment of troops to remove beyond the border any person who attempts to make a settlement in the Indian Territory. Let these orders be executed firmly, with due consideration to the misguided emigrants, but in such a manner as to carry conviction that the Government is in earnest. I am sure these emigrants have been deceived by some parties having sinister motives, and that as soon as they are convinced that the Government is bound to protect this Territory against trespass, they will move to the nearest vacant lands in Kansas or Texas which are open to entry, or are subject to the homestead laws.

As soon as Generals Pope and Davis return to their posts of duty, the execution of these orders will properly devolve on them. Please report your action as early as pos-

I am, with respect, yours, truly,

W. T. SHERMAN,
General.

Orders positive to expel if across the border. Notify this side.

W. T. S.

[Telegram.]

CHICAGO, ILL., *May* 3, 1879.

To General W. T. SHERMAN:

Your dispatch of yesterday received. The troops will be sent to the points named and put under good officers, and every effort will be made to comply with the instructions of the Government on the subject.

P. H. SHERIDAN,
Lieutenant-General.

[Telegram.]

WASHINGTON, D. C., *May* 3, 1879.

[FROM DEPARTMENT OF JUSTICE.]

To Hon. GEORGE W. MCCRARY,
Secretary of War:

Letter from Hallowell, Kansas, states that numbers in small parties have already entered Indian country; that a general advance is expected May 7. Managers of movement assert proclamation will not be heeded and that troops cannot stop the movement or remove after location. Leaders and press insist this is another Black Hills affair, and Government will discover it is powerless and Congress will hasten to open the lands for settlement. Hallowell thinks movement is widespread, preparation extending to entire southern tier counties, and to stop it will require rigid measures.

CHAS. DEVENS,
Attorney-General.

[Indorsement.]

HEADQUARTERS OF THE ARMY,
Washington D. C., May 3, 1879.

Respectfully returned to the honorable Secretary of War.

I believe the movement can be stopped if all departments of Government, civil and military, will persevere and act in harmony.

The inclosed map, just received, must be the prime cause, and the bad example in the case of the Black Hills when the Government yielded to the emigrants.

W. T. SHERMAN,
General.

Note in Adjutant-General's Office.—Copy of map furnished with correspondence from Interior Department, under Senate resolution of May 7, 1879.

[Telegram.]

CHICAGO, ILL., *May* 5, 1879.

General W. T. SHERMAN:

I am in receipt of letter of Hon. Secretary of War of May 2, and your letter of instructions of same date.

Troops have been sent to Coffeyville, Wichita, and Kansas City, and I will order a detachment to Vinita, the present terminus of the Atlantic and Pacific, all under command of Col. C. H. Smith, Nineteenth Infantry. Commanding officers at Sill, Reno, Supply, Elliott, and cantonment have been notified, and copies of your instructions to me will be furnished them.

I will take steps to send troops to all other points from which emigrants may attempt to enter the Territory.

I would suggest that an Indian agent be sent to co-operate with Colonel Smith.

P. H. SHERIDAN,
Lieutenant-General.

[Telegram.]

CHICAGO, *May* 6, 1879.

To General E. D. TOWNSEND,
Washington, D. C.:

The following dispatch just received would lead one to believe that accounts in the newspapers of the invasion of the Indian Territory by emigrants are exaggerated.

P. H. SHERIDAN,
Lieutenant-General.

"FORT LEAVENWORTH, *May* 6.

"ASSISTANT ADJUTANT-GENERAL, *Chicago:*

"Commanding officer Fort Gibson has been directed to send party to Vinita, authorized to use force only on written requisition of Indian agent. Colonel Smith telegraphs to-day from Coffeyville: 'Nothing of importance to report from this place at present. There is no excitement of any kind here.'

"PLATT,
"*Assistant Adjutant-General.*"

EXECUTIVE MANSION,
Washington, D. C. May 6, 1879.

GENERAL: Please instruct the officer in command in the Indian Territory by telegraph that the President considers the request already received from the authorities of the Indian Bureau as sufficient to authorize the employment of the troops in expelling intruding immigrants, and in stopping and turning back such as are entering the Territory. The President directs that the military authorities proceed without waiting for further requests to carry out the orders already issued, and that they use great diligence by employing the cavalry as far as practicable, making frequent reports.

Respectfully,

GEO. W. MCCRARY,
Secretary of War.

General W. T. SHERMAN,
Commanding Army of the United States.

[Telegram.]

HEADQUARTERS ARMY OF THE UNITED STATES,
Washington, D. C., May 6, 1879.

General P. H. SHERIDAN,
Commanding Division Missouri, Chicago:

The Secretary of War instructs me as follows: Please instruct the officer in command in the Indian country that the President considers the request already received from the authorities of the Indian Bureau as sufficient to authorize the employment of the troops in expelling intruding emigrants, and in stopping and turning back such as are entering the Territory.

The President directs that the military authorities proceed without waiting for further requests to carry out the orders already issued, and that they use great diligence by employing the cavalry as far as practicable. Please telegraph these orders, and report as fully and frequently as necessary by telegraph.

W. T. SHERMAN,
General.

[Telegram.]

WAR DEPARTMENT,
Washington, D. C., May 6, 1879.

[FROM DEPARTMENT OF JUSTICE.]

To Hon. GEO. W. MCCRARY:

The following telegram has been received from Topeka, Kans., May 6:

"Hon. CHAS. DEVENS,
"*Attorney-General:*

"I learn that a large number of citizens have crossed the State line and taken possession of the Quapaw Reservation south of Baxter Springs. There is continued emigration into the Territory, and much excitement, which seems to be spreading rapidly.

"GEO. S. PECK,
"*United States Attorney.*"

CHAS. DEVENS.

[Telegram.]

HEADQUARTERS MILITARY DIVISION OF THE MISSOURI,
Chicago, Ill., May 7, 1879.

General W. T. SHERMAN,
Washington, D. C.:

Your dispatch of yesterday, giving additional instructions for commanding officers in the Indian Territory, has been duly transmitted; and the cavalry and every other means will be used to accomplish the object in view. I will transmit by telegraph all reliable information which reaches me.

P. H. SHERIDAN,
Lieutenant-General.

[Telegram.]

HEADQUARTERS ARMY OF THE UNITED STATES,
Washington, D. C., May 7, 1879.

General P. H. SHERIDAN,
Commanding Division, Chicago:

The President and Secretary of War are now in my office. They have information through other sources that emigrants have gone and are still going into the Indian country from Baxter Springs, and they are determined that this unlawful intrusion shall be absolutely and promptly stopped by the military. Therefore, I want you to bring to that border what cavalry you can possibly spare from Sill, Supply, and Elliott, and forcibly eject every emigrant who has gone over the border, or may attempt to go there. The President attaches so much importance to this that you had better send General Pope, who left New York yesterday for Leavenworth, to that border personally to direct operations, or to go yourself. The troops may act under existing orders, without waiting for the interposition or requisition of Indian agents. Only be sure that no part of the Indian Territory be occupied by trespassers, and that all such trespassers be promptly ejected by military forces. Report action frequently, as the Interior Department and the Department of Justice have reports varying so widely from those which come from the military.

W. T. SHERMAN,
General.

[Telegram.]

CHICAGO, ILL., *May* 7, 1879.

To General W. T. SHERMAN,
Washington, D. C.:

Your dispatch of this date just received. I have ordered a company of infantry by rail to Baxter Springs, two companies of cavalry from Reno to Vinita for use along that line of frontier, one company of cavalry to Coffeyville, and one to Wichita.

I will send two staff officers there immediately, and as soon as General Pope reaches Leavenworth will send him to the frontier to stay until the trouble is over, and if you deem it best will go myself. There is no doubt of our ability to eject these trespassers if the authority we now have remains unchanged.

P. H. SHERIDAN,
Lieutenant-General.

[Telegram.]

CHICAGO, *May* 7, 1879.
[Received Washington, D. C., 3.50 p. m.]

To General W. T. SHERMAN,
Washington, D. C.:

Unless you otherwise direct, I will, on the arrival of the four companies of the Twenty-second Infantry now at Brady and Mackinac in this division, order them for temporary duty at Fort Gibson for use along eastern frontier of the Indian Territory.

If you know when they will start please let me know.

P. H. SHERIDAN.

[Telegram.]

HEADQUARTERS ARMY OF THE UNITED STATES,
Washington, D. C., May 7, 1879.

General P. H. SHERIDAN,
Commanding Division, Chicago, Ill.:

Your two dispatches of to-day are received, and seem to me to completely fulfill all the conditions. Will telegraph to General Hancock about the four companies of the Twenty-second Infantry, and instruct him to notify you by telegraph when they can be available.

The moment they reach the limits of your division they are subject to your command.

W. T. SHERMAN,
General.

[Telegram.]

HEADQUARTERS ARMY OF THE UNITED STATES,
Washington, D. C., May 7, 1879.

General W. S. HANCOCK,
Commanding Division, Governor's Island, New York Harbor:

General Sheridan needs on the Kansas frontier the four companies of the Twenty-second Infantry ice-bound at Mackinac and Brady. Let him know by telegraph when he may expect them to reach Kansas City. If possible, hurry them up.

W. T. SHERMAN,
General.

[Telegram.]

NEW YORK, *May* 7, 1879.

General W. T. SHERMAN,
Washington, D. C.:

Your telegram received. In reply to a telegram of mine of this morning, Major Reynolds, quartermaster at Buffalo, states that it is expected that a steamer will take the troops from Brady on the 10th and those from Mackinac probably the next day, and General

Sheridan can give orders to them as they pass through Chicago to stop them at Kansas City or elsewhere.

I will give orders to hasten their movements or prevent unnecessary delay; in fact, have already done so. I will communicate with General Sheridan, telling him to give them his directions in accordance with the tenor of your telegram.

W. S. HANCOCK,
Major-General Commanding.

[Telegram.]

NEW YORK, *May 8th.*

General SHERMAN, U. S. A.,
Washington, D. C.:

Following just received from quartermaster at Buffalo:

"Arrangements are made so that steamer Peerless will take Brady troops tenth instant, those at Mackinac eleventh inst., and proceed to Chicago with both commands. She will be due there about thirteenth inst. I have informed General Sheridan."

W. S. HANCOCK,
Major-General Commanding.

[Telegram.]

CHICAGO, *May* 8, 1879.

To General W. T. SHERMAN,
Washington, D. C.:

The four companies of the Twenty-second will leave Mackinac on the tenth, and I will for the present, at least, use them along the eastern line of the Indian Territory, sending their families, &c., to Fort Gibson. The cavalry for Vinita, Coffeyville, and Arkansas City ought to be now *en route;* also a company of infantry by rail from Fort Lyon for Baxter Springs.

I will also hold two companies of the Fifth Cavalry at D. A. Russell in readiness to move by rail at a moment's notice to Baxter Springs and Chetopa. Staff officers from General Pope's headquarters have been sent along the eastern line, and Colonel Bradley from mine has gone to Baxter Springs, and to-morrow Colonel Forsyth will go to Chetopa.

Colonel Smyth, Nineteenth Infantry, sees no signs of incursion from the north.

The officer at Vinita sees little danger there, but has fears about Baxter Springs and Chetopa, both of which places have been looked after. I think the President can rest confident of our ability to manage the matter as soon as we can find out the proper place to operate.

General Pope will reach Leavenworth on Saturday morning, and has been ordered to Indian Territory to conduct the operations necessary to prevent unauthorized persons from settling in that country.

P. H. SHERIDAN,
Lieutenant-General.

[Telegram.]

CHICAGO, *May* 8, 1879,
[Received Washington, D. C., 5.44 p. m.]

To General W. T. SHERMAN,
Washington, D. C.:

In a letter to the General of the Army, September 30, 1876, I notified him of the existence of mineral deposits of gold and silver in the western end of Wichita Mountains. In view of the present excitement, I have thought it best to again renew this information and to state my belief in the existence there of these minerals, this belief being strengthened by additional information received from time to time since.

P. H. SHERIDAN,
Lieutenant-General.

[Telegram.]

HEADQUARTERS OF THE ARMY,
Washington, D. C., May 9, 1879.

General P. H. SHERIDAN,
Commanding Division, Chicago, Ill.:

I well recall your former opinion of minerals in the Wichita Mountains. I do not understand the present invasion of the Territory is by miners, but by farmers; yet it may be advisable to have a thorough official exploration, so that we may know the exact truth. I attach little value to gold deposits, but they create an excitement which it is almost impossible to resist.

W. T. SHERMAN,
General.

[Telegram.]

CHICAGO, *May* 9, 1879.

To ADJUTANT-GENERAL,
Washington, D. C.:

The officer at Wichita telegraphs: No excitement here; no organized body. Nearly every emigrant train passing through has been visited. Some few acknowledge that they were going into Territory, but are now disposed to obey proclamation. About twenty-five teams pass here daily, but a good many intend locating in Kansas. A few emigrants were met by Lieutenant Claggett coming out of the Territory. I think the proclamation will be respected. Captain Clapp arrived to-day in charge of Cheyenne Indians. Agent Miles arrived yesterday. Both give assurances that no settlers, so far as they know, have entered or located within eighteen miles on either side of the Fort Reno trail.

P. H. SHERIDAN,
Lieutenant-General.

[Telegram.]

CHICAGO, ILL., *May* 9, 1879.
[Received Washington May 9—3.54 p. m.]

To General W. T. SHERMAN,
Washington, D. C.:

I have your telegram of this date. I fully understand the present attempted invasion of the Indian Territory. My telegram of yesterday was simply to give information of other disturbing interests in the Territory. A few adventurers have gone to Wichita Mountains.

P. H. SHERIDAN,
Lieutenant-General.

[Telegram.]

CHICAGO, ILL., *May* 9, 1879.

General E. D. TOWNSEND,
Washington, D. C.:

The following dispatch, just received from headquarters Department of the Missouri, is forwarded for information of the General of the Army.

P. H. SHERIDAN,
Lieutenant-General.

"Officer at Viniti reports that Indian Agent Haworth informs him that he has spent two days on Quapaw lands; found many claims marked off, with claimants' names on trees. Claimants all gone; most of them from Kansas and Missouri. The officer at Wichita reports quite a number of persons have passed through *en route* to the Territory, but news having reached them of the intention of the Government, some have returned and others have settled in Kansas. An officer from the cantonment reports that on his way out he met several parties coming out of the Territory.

"PLATT, *A. A. G.*"

[Telegram.]

CHICAGO, *May* 10, 1879.

To ADJUTANT-GENERAL,
Washington, D. C.:

The following dispatch from Lieutenant-Colonel Bradley, who was sent from these headquarters to Baxter Springs, is repeated for information of the General of the Army.

P. H. SHERIDAN,
Lieutenant-General.

BAXTER SPRINGS, KANS., *May* 10.

ADJUTANT-GENERAL,
Military Division of the Missouri, Chicago:

Reached here last night with Captain Ilsley, of General Pope's staff. There is no indication of any settlers going into the Indian Territory from this point. Some of the citizens of this and adjoining counties have gone into the Territory and staked out claims in a strip of country directly south of here, returning to their homes afterwards. This strip of country, about three miles by nine, is said to have been purchased of the Quapaws by the Government. I am going over to this Quapaw country to-day, and will report on my return.

BRADLEY,
Lieutenant-Colonel.

[Telegram.]

CHICAGO, ILL., *May* 12, 1879.

General E. D. TOWNSEND,
Washington:

The following dispatch is repeated for the information of the General of the Army. The four companies of the Twenty-second Infantry are not especially wanted in Texas, and I will let them remain until next fall, or longer, at Gibson.

P. H. SHERIDAN,
Lieutenant-General.

F LEAVENWORTH, *May* 11.

Lieut. Gen. P. H. SHERIDAN,
Chicago, Ill.:

Latest telegrams received last night stated that there are no parties going into the Indian Territory so far as can be learned by careful inquiry at several points along the frontier. There are some persons at Baxter Springs who talk of going into the Territory from that point, but none have yet gone, and, as the company from Fort Lyon reached Baxter Springs yesterday, it is not likely any will attempt it. The only authentic information yet received that any have entered is from Coffeyville, and that only about sixty persons have entered the Territory during the entire spring.

The cavalry companies from Reno, Supply, and Snake Creek are on the march for Vinita, Arkansas City, and Coffeyville, and will be there some time this week, when they will be divided into detachments, and sent to scour the country and put out all persons who may have gone into the Territory, if any there be. There is no need of any more troops to be sent here, though the companies of the Twenty-second Infantry may have some moral effect if left for a few weeks at Vinita.

I feel, however, perfectly competent, with the troops I have, to enforce the President's proclamation, and will go soon and distribute the troops as soon as the cavalry companies referred to have reached the point indicated.

The mounted infantry company at the cantonment on Canadian will be ordered to watch the line west of Arkansas City. I consider this whole affair not only grossly exaggerated, but practically a "humbug." It appears to be an attempt to ascertain what the Government would do in case of such a movement, rather than any serious purpose to make it.

JOHN POPE,
Brevet Major-General.

[Telegram.]

CHICAGO, *May* 13, 1879.

To General W. T. SHERMAN,
Washington, D. C.:

Latest reports to General Pope indicate no further intentions on part of squatters to disobey the proclamation of the President of the date of April twenty-sixth.

P. H. SHERIDAN,
Lieutenant-General.

[Telegram.]

HEADQUARTERS ARMY OF THE UNITED STATES,
Washington, D. C., May 13, 1879.

General P. H. SHERIDAN,
Commanding Division, Chicago, Ill.:

Your letter and dispatch are received. All parties, including the President and Secretary of War, are much pleased at what you report. The President wanted you to know how much he appreciated your prompt action, to which he attributes the fact that the scheme to invade the Indian Territory was totally defeated without the necessity of using violence to any emigrant.

W. T. SHERMAN,
General.

C

MAP OF INDIAN TERRITORY.

BALTIMORE, MARCH 25, 1879.—*No. 4 North Howard St.*

DEAR SIR: In the "Chicago Times" of February 17th I noticed a communication of yours, in which you state there are *several million acres of land* in the Indian Territory which have been purchased by the General Government from the Indian tribes therein, and that they are now a part of the *public lands* of the United States.

This article has been extensively copied and commented upon by the presseast and west, causing great and growing interest on the part of thousands for further and fuller information, to meet which will you please give answer to the following questions:

1. As to exact amount purchased.
2. From what tribes bought.
3. Its situation in the Territory.
4. As to the Government's title, if free from restriction; if not, its nature; or was the land so bought purchased with the intention of its use in settling other tribes, to be brought into the Territory, upon it.
5. State the nearest point, reached by rail, to such lands; or if they are on, or near, the surveyed line of the Atlantic and Pacific road; or how far from its present terminus.
6. Where can *accurate* maps of the Territory, showing location and boundaries of said purchased lands, be obtained?

An early answer, covering above questions, and such other information as in your judgment would be of help and interest, is requested.

AUGUSTUS ...

To Col. E. C. BOUDINOT.

WASHINGTON, D. C., *March* 1879.

HON. AUGUSTUS ALBERT,
No. 4 North Howard St., Baltimore, Md.

SIR: Your letter of the 25th inst., making enquiries concerning lands belonging to the United States, situated in the Indian Territory, is received.

1st. In reply, I will say that the United States, by treaties made in 18... chased from Indian tribes, in the Indian Territory, about 14,000,000 acres of land.

2d. These lands were bought from the Creeks, Seminoles, Choctaws and Chicksaws; the Cherokees sold no lands by their treaty of 1866.

The Creeks, by their treaty of 1866, sold to the United States 3,250,560 acres, for the sum of $975,168. The Seminoles, by their treaty of 1866, sold to the United States 2,169,080 acres, for the sum of $325,362.

The Choctaws and Chickasaws, by their treaty of 1866, sold to the United States the "leased lands" lying west of 98° of west longitude, for the sum of $300,000. The number of acres in this tract is not specified in the treaty, but it contains about 7,000,000 acres. (See 14th vol. Statutes at Large, pages 756, 769 and 786.)

Of these ceded lands the United States has since appropriated for the use of the Sac and Foxes 479,667 acres, and for the Pottowotomies 575,877 acres, making a total of 1,055,544 acres. These Indians occupy these lands by virtue of treaties and acts of Congress. By an unratified agreement, the Wichita Indians are now occupying 743,610 acres of these ceded lands. I presume some action will be taken by the United States government to permanently locate the Wichitas upon the lands they now occupy. The title, however, to these lands is still in the United States.

By executive order, Kiowa, Comanche, Arrapahoe, and other wild Indians, have been brought upon a portion of the ceded lands, but such lands are a part of the public domain of the United States, and have all been surveyed and sectionised.

A portion of these 14,000,000 acres of land, however, has not been appropriated by the United States for the use of other Indians and in all probability never will be.

3d. These unappropriated lands are situated immediately west of the 97° of west longitude, and south of the Cherokee Territory. They amount to several millions of acres, and are as valuable as any in the Territory. The soil is well adapted for the production of corn, wheat, and other cereals. It is unsurpassed for grazing, and is well watered and timbered.

4th. The United States have an absolute and unembarrassed title to every acre of these 14,000,000 acres, unless it be to the 1,054,544 acres now occupied by the Sac and Fox, and Pottowottomie Indians. *The Indian title has been extinguished.*

The articles of the treaties with the Creeks and Seminoles, by which they sold their lands, begin with the statement that the lands are ceded "*in compliance with the desire of the United States to locate other Indians and freedmen thereon.*"

By the express terms of these treaties the lands bought by the United States were not intended for the exclusive use of "other Indians" as has been so often asserted. They were bought as much for the *Negroes* of the country as for Indians.

The Commissioner of the General Land Office, General Williamson, in his annual report for 1878, computes the area of the Indian Territory at 44,154,240 acres, of which he says 17,150,250 acres are unsurveyed; the balance of the lands, amounting to 27,003,990 acres, he announces, have been surveyed; and *these* lands he designates as "*Public Lands.*"

The Honorable Commissioner has fallen into a natural error; he has included in his computation the lands of the Cherokees west of 98° west longitude, and the Chicksaw Nation which, though surveyed, can in no sense be deemed "public lands." The *only* public lands in the Territory are those marked on this map, and amount, as before stated, to about fourteen million acres.

Whatever may have been the desire or intention of the United States government in 1866, to locate Indians and Negroes upon these lands, it is certain that no such desire or intention exists in 1879. The Negro, since that date, has become a citizen of the United States, and Congress has recently enacted laws, which practically forbid the removal of any more Indians into the Territory. Two years ago Mr. Mills of Texas caused a provision to be inserted in the Indian appropriation bill, prohibiting the removal of the Sioux Indians into the Indian Territory; a project at that time contemplated by the Interior Department; and by a similar provision in the Indian appropriation bill of last winter, the removal of any Indians from Arizona, or New Mexico, into the Indian Territory is forbidden. These laws practically leave several millions of acres of the richest lands on the continent free from Indian title, or occupancy, and an integral part of the public domain.

5th. The town of Wichita, in the State of Kansas, at the junction of the Big and Little Arkansas rivers, the present terminus of a branch of the Atchison, Topeka and Santa Fe Railroad and the town of Eldorado, the terminus of another branch, are the nearest railroad points to these lands. From Wichita, to these lands is about 90 miles due south. (See map.) There are several other railroad points on the northern line of the Territory, more remote than Wichita or Eldorado. These points are Coffeeville, the terminus of the Leavenworth, Lawrence and Galveston R. R.; Chetopah, on the Missouri, Kansas and Texas R. R., which is built through the Territory to Texas; and Baxter Springs, the southern terminus of the Missouri River, Fort Scott and Gulf R. R. A glance at the map will show the location of these places. The Atlantic and Pacific, now called the St. Louis and San Francisco R. R., is finished to Vinita, in the Cherokee Nation, where it crosses the Missouri, Kansas and Texas R. R. The surveyed line of this railroad runs through these ceded lands.

6th. To save the time which would be required to answer the many letters I am constantly receiving upon this subject, I have had made a plain but accurate map, which I enclose with this letter. I shall be glad to furnish maps and such further information as may be requested.

Very respectfully, yours, &c.,

E. C. BOUDINOT.

E. C. BOUDINOT.

PUBLIC LANDS

U. S. PUBLIC LANDS

CANADIAN R.

North Fork

Red Fork

Red River

Salt Plains

Gypsum Region

Red Creek

Ponca

Camp Supply

Caldwell

Wichita

Augusta

Arkansas City

White Water

Chelsea

El Dorado

Fort Dodge

Fort Scott

Coffeeville

Chetopa

Baxter Springs

Vinita

Verdigris R.

Illinois R.

Muskogee

Van Buren

Fort Smith

Old Ft. Arbuckle

Old Ft. Holmes

M'Alister

Fort Cobb

Wichitas

Washita

Ft. Sill

Ft. Arbuckle

Proposed New Post

Fort Washita

Fort M'Cullough

Dennison

Sherman

Bonham

Paris

Clarksville

Big Creek

Kiamichi Cr.

Boggy Depot

Seminoles

Pottowatomies

Sac and Fox

Osages

Pawnees

Cherokees

Choctaw Nation

Chickasaw Nation

A. T. & S. F. R.R.

L. L. & G. R. R.

M. R. & T. R. R.

M. K. & T. R. R.

A. & P. R. R.

Texas & Pacific R. R.

Missouri Kansas & Texas R.

Kansas

Missouri

Arkansas

Texas

100° 99° 98° 97° 96° 95° 94° 101°

37° 36° 35° 34°